

## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.

Cornell University Library  
KF 2181.A848

[Arguments on behalf of railroads reques



3 1924 017 148 309

law









*Adace F. Walker*

---





United States. Interstate  
Commerce Commission.

[ Arguments ]





BEFORE THE

**Inter-State Commerce Commission.**

MAY, 1887.

---

IN THE MATTER OF THE APPLICATION OF SUNDRY  
RAILROADS FOR RELIEF FROM THE OPERATION OF  
SECTION 4 OF THE ACT TO REGULATE COMMERCE.

---

Argument submitted by the Iroquois Club  
against granting such relief.

---

At a meeting of the Iroquois Club, on the third day of May, 1887, the following resolutions were adopted:

*Resolved by the Iroquois Club,* That the interests of the public demand the enforcement of compliance on the part of the railroad companies with the provisions of the act to regulate commerce, passed at the last session of Congress.

And that the Commission thereby created does not possess any such dispensing power as that invoked by numerous railroads in the effort to procure general suspension of the fourth section of the act.

Nor is it desirable or expedient that such power as

the Commission does possess in the premises should be exercised until it becomes apparent, after honest and sincere effort on the part of the railroads to comply with the law, in its letter, and its spirit, that some of the evils which they so persistently predict necessarily attend upon its faithful enforcement, and then only upon a broad consideration of public interests, and not for the benefit of any class or monopoly.

*Resolved*, That a committee of five be appointed to present these views to the Commission.

In accordance with these resolutions a committee was appointed, by which this argument is presented.

## I.

The first proposition of these resolutions may, in one sense, be said to be immaterial. For in so far as it is commendatory of the general policy of the act, it may be urged that the Commission is not concerned with this subject; and in so far as it seems to advocate an enforcement of the law, it may be considered unnecessary. It is, however, a mere preliminary, suggested by the clamor raised by persons supposing themselves especially affected by the law, to the effect that it is utterly destructive, not merely of their interests, but of the business and commerce of the country—a cry not unfamiliar to those who have observed the efforts of the Government to deal with these great monopolies during the last twenty years. Therefore, it was not deemed wholly impertinent to preface a statement as to construction with an announcement that those who held to this construction did not concur in the views so persistently maintained and sedulously fostered by the opponents of the law as to its general pernicious and destructive character.

Further than this, it may be observed that it aids construction to examine somewhat the policy of a statute;

to consider what is its general scope and policy, ~~what it~~ seeks to accomplish, and learn whether it should be liberally or strictly construed. In doing this some prognostication as to the probable effects of its enforcement is not wholly out of place.

## II.

As preliminary to the discussion of that part of the subject indicated by so much of the resolutions as questions the dispensing power of the Commission, as invoked by the railroads, it may be well to consider the general situation of affairs, to change which this law was adopted. In so doing it is not intended to discuss the question as legislators called upon to formulate a statute, but as those who, accepting the law as it is, seek from every legitimate source light as to its true meaning and interpretation.

It may be premised at the outset that there is no purpose in this argument to deny the great importance of railways to the State, nor to depreciate the character of the service rendered by them.

To quote the language of a gifted judge: "Railroads  
"are the great public highways of the world, along which  
"its gigantic currents of trade and travel continually pour,  
"highways compared with which the most magnificent  
"highways of antiquity dwindle into insignificance. They  
"are the most marvelous invention of modern times.  
"They have done more to develop the wealth and  
"resources, to stimulate the industry, reward the labor,  
"and promote the general comfort and prosperity of the  
"country, than any other, and perhaps all other, mere  
"physical causes combined."

PAINE, J., in *Whiting v. Sheboygan, etc.*, R.  
R. Co., 25 Wis. 167-219.

And it may be conceded *pro hac vice*, what it would certainly be difficult to demonstrate, though often asserted,

that freight and passenger rates are lower in this country than elsewhere. It is also true that in all departments of railroading the tendency constantly is to give more and better service at diminished cost. It is well understood that a reduction in rates does not, necessarily, involve loss of revenue, though this simple proposition is frequently lost sight of in the complicated calculation of pool commissioners and traffic managers. And so it is, that while railroad companies have, by pooling arrangements, traffic agreements, and every device known to human ingenuity, sought to destroy competition, yet the tendency has been towards lower rather than higher rates, under the influence of great economic laws, before which even banded monopoly is impotent.

Therefore, if this law were aimed merely at a reduction of rates, it might plausibly be urged that this was a matter requiring no legislation, and which was self regulative in a large degree. But that is not the scope of the act, nor the occasion of its adoption. The latter can be stated in two words: Unjust discrimination. This has permeated every department of railway service and complicated and disturbed every commercial and industrial problem.

It is within the knowledge of every man conversant with the business of large centres, that by a system of special rates and rebates a favored shipper would, under the old system, be enabled to outstrip all competition simply by means of this discrimination. Special trades were fostered, towns and cities built up or left to languish—one individual raised to affluence and his competitor sunk in financial ruin—all at the will of the corporations controlling transportation, and all by means of discrimination in carrying charges. Strange as it may seem, the common law, while compelling a common carrier to content himself with reasonable compensation for his service, yet appeared



to tolerate discrimination between localities and individuals.

“ At common law, a person holding himself out as a common carrier of goods was not under any obligation to treat all customers equally. The obligation which the common law imposed upon him was to accept and carry all goods delivered to him for carriage, according to his profession (unless he had some reasonable excuse for not doing so), on being paid a reasonable compensation for so doing; and if the carrier refused to accept such goods, an action lay against him for so refusing; and if the customer, in order to induce the carrier to perform his duty, paid, under protest, a larger sum than was reasonable, he might recover back the surplus beyond what the carrier was entitled to receive, in an action for money had and received, as being money extorted from him. But the fact that the carrier charged others less, though it was evidence to show that the charge was unreasonable, was no more than evidence tending that way. *There was nothing in the common law to hinder a carrier from carrying for favored individuals at an unreasonably low rate, or even gratis.* All that the law required was, that he should not charge any more than was reasonable.”

(Citing authorities) per BLACKBURN, J., in  
*Great Western Ry. Co. v. Sutton*, 22 L.  
T. R.N. S. 43-45.

Now, it was especially and particularly to change the common law rule in this respect, and to prevent the exercise of this power of discrimination, that this act was passed.

The second section is directed against discrimination between individuals, while the third is broader, and also includes localities within its provisions. It is a familiar rule of statutory construction that an act must be consid-

ered together, and one part or section will not be construed so as to destroy or abrogate the effect of another provision, unless absolutely necessary. Therefore, it is important, in view of the main object of the law, to first ascertain what is the true construction of sections 2 and 3, and then so to construe section 4 as not to impair these preceding provisions.

In view of the notorious prevalence of unjust discrimination, and its baneful influence, as well as the very general demand for legislation to abate it, which, under the late decision of the Supreme Court in the Wabash Railway case, must be national and not State, in order to be effective, this act should be liberally construed and applied as a highly remedial measure.

Sections 2 and 3 endeavor to secure to every individual and to every locality absolute and exact equality in the tolls to be exacted for railway service. The whole theory of the law is that railways are great public highways, free to all, upon payment, not only of reasonable, but of *equal* tolls for the same service. It is true representatives of corporate interests, not unnaturally, have attempted heretofore, and to some extent still attempt, to maintain a contrary notion. This is well stated in the report of the Railway and Warehouse Commission of Illinois for 1870 and 1871, at page 26.

"The reports of many of the railroad companies  
 "show, and the views expressed to the Commissioners by  
 "many of the prominent representatives of these corporations in this State, leave no doubt that those corporations are strongly impressed with the idea, that outside,  
 "perhaps, of a few police regulations, the Legislature has  
 "no power, under the Federal Constitution, to modify or  
 "regulate in any manner their actings and doings, and  
 "that their charters furnish the only measure of their rights  
 "and duties. \* \* \* \* \* They do not  
 "consider, apparently, that when a part of the sovereignty

“ of the State, the right of eminent domain, was freely  
 “ delegated them, and when, in order to assist them, cities,  
 “ counties and towns were allowed to exercise the taxing  
 “ powers, all of which could only be justified under the plea  
 “ that it was for the public good, that they therefore  
 “ ceased to be strictly private, and became at least *quasi*  
 “ public corporations. They do not seem to reflect that  
 “ such powers as were granted to them must always be  
 “ understood to have been granted with the reservation  
 “ that they should be exercised for the public good also,  
 “ and must, from the necessity of the case, become con-  
 “ trollable by the sovereignty of the people, so as to have  
 “ the objects of such grants justly accomplished.”

Although this language was applied to State legislation, it is not inapplicable to all attempts by the Government to deal with these *quasi* public corporations, who, upon every principle of sound law, as well as good morals, must always be regarded as trustees for the people, of the great powers conferred upon them.

The business of these corporations being, in the language of the Supreme Court, “ clothed with a public interest,” and they exercising “ a sort of public office” (*Munn v. Illinois*, 94 U. S. 113, 132), this law endeavors to apply to that business the rules which govern or should govern the exercise of governmental powers. As all men are free and equal before the law, and equally entitled to the benefits and compelled equally to bear the burdens of government, so does this law intend<sup>2</sup> them to stand as to these great *quasi* governmental agencies.

It may be remarked, as will be seen hereafter, that an unwarranted discrimination between localities is practically a discrimination between individuals, within the meaning of the law. It is the shipper who is discriminated against in either case. And if the location of the shipper in whose favor the discrimination is made does not warrant

it, then it is clearly within the inhibition of section 3, because it gives an *undue* advantage to particular persons.

Sections 2 and 3, being obviously intended to establish equal rights of all to railway service, upon payment of the same tolls for the same or similar service, section 4, with the construction of which this argument is particularly concerned, proceeds more specifically and narrowly in the same direction. It prohibits a greater charge for "transportation of passengers or like kinds of property, under substantially similar circumstances and conditions, for a shorter distance than for a longer distance, over the same line, in the same direction, the shorter being included within the longer distance." It may be doubted whether, in view of the true construction of the preceding sections, this clause adds anything to the law. But it seems to have been inserted out of excess of caution, so that under no specious pretext could the provisions against discrimination between localities be evaded.

It may be well now, however, to consider the proper construction of these preceding sections in connection with this provision, in the light somewhat of authority, before proceeding to discuss the power vested in the Commission by that portion of section 4 which follows.

### III.

It has been claimed by Mr. Fink, on behalf of the railroads, and also by Mr. Smith, of the Louisville and Nashville Railroad, in the course of his very able argument on behalf of the application of The Southern Railway and Steamship Association, that the clause, "under substantially similar circumstances and conditions," inserted in section 4, warrants a greater charge for transportation for a shorter than for a longer distance where the charge for the longer distance is affected by competition.

Mr. Fink, utterly ignoring the vital object and purpose of the law, which beyond all question is especially

aimed at discretionary discrimination by railroads, and assuming that its only purpose was to secure reasonable charges for transportation, sums the matter up thus:

" The qualifying clause in the fourth section, ' under substantially similar circumstances and conditions,' therefore leaves the determination of whether a greater charge can justly be made for a shorter haul than for a longer, under different circumstances and conditions, to the judgment of the carrier in the first place, to be finally passed upon by the courts. Section 4, therefore, does not prescribe a more definite rule than section 1, by which the carriers could be guided in determining in all cases what are reasonable and just charges. That section might, therefore, have been omitted altogether, *as it conveys no other meaning than that which is already expressed in section 1, viz: that the railroad charges shall be reasonable and just.*"

To which he adds complacently:

" There can be no doubt that the above is the correct interpretation of section 4."

The same qualifying words, " under substantially similar circumstances and conditions," are found in section 2. Words of like import have been employed in various English statutes, and have been considered and construed by the courts of that country. The construction there adopted by the highest authority is, that the material circumstances and conditions which differentiate the rate are circumstances connected with the *carriage of the goods*. All idea of competition being such a circumstance is expressly excluded, as is also the idea that the purpose or business of the consignor, or of the consignee (as that shipment is for export by him), is at all material. The case already cited is a leading authority on this subject.

*The Great Western Railway Co. v. Sutton,*  
H. of L. 22, L. T. R. N. S. 43.



There plaintiff was a kind of small expressman, collecting small parcels in London, enclosing them in one package to his agents in the country, for distribution by them to various parties. These packages were called packed parcels and carried by the railway, but at a higher charge than packed parcels of similar exterior appearance, shipped by various wholesale houses in London. Judgment was for the plaintiff in the Exchequer Chamber, where the case is reported in 13 Law Times Report, N. S. 225, 226.

Without entering into any very critical examination of the language employed, and the various statutory enactments employed, which were construed on appeal to the House of Lords, it may be observed that their plain import was substantially that of the clause under consideration here.

It is to be remembered that in the discussion of great questions of law, too minute study of grammar and syntax not infrequently leads to the neglect of more important considerations, although it may be said that the clause in the Railway Clauses Consolidation Act, 8 and 9 Victoria, chapter 20, section 90, is more favorable to the position taken by Mr. Fink than is that in our statute. In that act it is provided, that such tolls be at all times "charged equally to all persons, and after the same rate, \* \* \* in respect of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine passing over only the same portion of the line of railroad, under the same circumstances."

Mr. Justice BLACKBURN, after stating the common law rule as to discrimination, in language already quoted, and reviewing the course of legislation on the subject, uses this language:

"Then comes the question, what is the legal effect of this provision for equality? I think it appears from the preamble of the 90th section of the Railway Clauses

“ Consolidation Act of 1845, that the Legislature was of  
 “ opinion that the changed state of things, arising from the  
 “ general use of railways, made it expedient to impose an  
 “ obligation on railway companies acting as carriers, beyond  
 “ what is imposed on a carrier at common law. And if  
 “ this be borne in mind, I think the construction of the  
 “ proviso for equality is clear, and is, that the defendants  
 “ may, subject to the limitations in their special acts,  
 “ charge what they think fit, but not more to one person  
 “ than they during the same time charge to others, under  
 “ the same circumstances. And I think it follows from  
 “ this, that if the defendants do charge more to one person  
 “ than they during the same time charge to others, the  
 “ charge is, by virtue of the statute, extortionate.”

And again: “ It would be the very essence of the case  
 “ to prove that the goods were of the like description and  
 “ carried under the like circumstances. But I think that  
 “ this applies to the description of the goods and the cir-  
 “ cumstances of the carriage, and not to the trade of a  
 “ consignor or consignee.”

And again: “ I have already intimated to your Lord-  
 “ ships my opinion that the circumstances must be those  
 “ relating to the carriage, not to the consignor; and that  
 “ the fact that the plaintiff was a rival carrier does not in  
 “ itself make a difference in the circumstances, such as to  
 “ justify a difference in the charge, under the statute; it  
 “ rather makes against the defendants, as supplying a  
 “ motive for an attempt to evade the statutable provision.”

• Justice WILLES, in treating the same question, uses this language:

“ The question, what is the meaning of the equality  
 “ clause, when it speaks of things of ‘ like description,’  
 “ conveyed under ‘ the like circumstances,’ ought, I think,  
 “ to be answered by saying that things of a ‘ like descrip-  
 “ tion,’ when, although their composition and structure are

“not ‘identical,’ which would be expressed by ‘the same description,’ not ‘like description,’ they are similar in those qualities which affect the risk and expense of carriage, and that they are conveyed under like circumstances where the route, risk and expense are, in the opinion of a jury, the same; otherwise not. For instance, bags of red wheat and bags of white wheat are of like description, and bags of cotton and bags of jute, of like weight and value, are of the like description, if there be no dissevering circumstances proved; but if it were super-added that really one was more risky or troublesome to carry than the other, the jury would hold that the goods were of different descriptions; and bags of silk may be suggested as an instance in which a jury would be sure so to hold.”

And again: “In effect, I think the phrase, ‘like description,’ is exhausted upon the goods, and ‘like circumstances’ upon the route, expense and risk of carriage, and that neither can be extended to the personal qualities of the individual who sends the goods.”

Baron Bramwell dissented, but the House of Lords adopted the views laid down by Blackburn, and affirmed the judgment in favor of plaintiff.

Lord CHELMSFORD, in delivering the opinion, used this language: “It is extremely difficult to understand what the Legislature meant by goods of a like description, though at first sight more capable of interpretation, because the word same is constantly used in popular language for similar. It seems to me that the words same and like have not different meanings in the two acts, and that the words must be used, not with reference to the contents of parcels, which the defendants have no means of knowing, but to the parcels themselves, whether, as WILLES, J., said, in answer to your Lordships’ question to the judges, they were like or different, for the

“purpose of carriage. I have felt greater difficulty in  
 “ascertaining the meaning of the words, under the same  
 “or under like circumstances. I do not, see, however,  
 “how they can relate to anything else than, the convey-  
 “ance of goods. To say that because the plaintiff is what  
 “has been called an intercepting carrier, and the other  
 “persons using the railway are wholesale dealers, there-  
 “fore the goods are not conveyed along the railway under  
 “the like circumstances, is an application of the words  
 “which I am not able to comprehend.”

This is a very important and instructive case on this subject, and contains such full review and comment upon the course of legislation in England as to make it especially convenient for reference.

In another case decided in the Court of Appeal, before Bramwell, Brett and Cotton, Lord Justices, the exact question whether competition with a rival company was a defense for violation of the equality clause considered in the last case, was decided, and in accordance with the principles there laid down it was held not to be.

*Evershed v. London Northwestern Railway Company*, 37 Law Times Reports, N. S. 623.

There the plaintiff was a brewer at Burton. Three other brewers at Burton had breweries united with the Midland Railway, and, doing the cartage themselves, were not charged by the Midland Railway Company for it, and were also allowed a rebate of nine pence per ton in respect of loading and unloading, etc., performed by themselves.

In order to compete with the Midland Company, the defendant exempted the three other brewers from any charge for cartage, but did not exempt the plaintiff, and allowed a rebate of nine pence per ton to the three other brewers, but not to the plaintiff. The plaintiff sued to

recover the sums paid by him in excess of what was paid by the other brewers, and his action was sustained.

Lord BRAMWELL used this language : “ No doubt, it looks hard at first that the defendants should have to lose the traffic of these three firms of brewers, or else make an abatement in their charges in other cases where it is not to their interest to make such abatement; but they can get the traffic of the favored brewers, if they reduce the charge to Evershed and the others, so as to make the charges to all equal. I think this was the intention of the Legislature. The plaintiff has a right to complain because an advantage of one shilling nine pence is given to the other firms, which is denied to him. I think, therefore, that there is an undue advantage given to the favored brewers, and there is an undue and unreasonable prejudice and disadvantage to which the plaintiff is subjected.”

The other judges concurred, Lord Justice COTTON remarking : “ Here the facilities which the three firms of brewers possess are entirely facilities as to the Midland Railway Company, while as to the defendants the only facility which they have is the facility to make a good bargain.”

This decision was affirmed in the House of Lords, at the conclusion of the argument for appellants. CAIRNS, then Lord Chancellor, delivered an opinion in the case, in which he used this language :

“ It appears to me that the question in cases like the present must always be simply this: Is the plaintiff obliged to pay one sort of remuneration for the services which the company perform for him, while they perform the same services for other traders, either for less remuneration or for no remuneration at all? In my opinion, undoubtedly the company is performing identically the same services for the plaintiff in this action as for the two



“ other firms of brewers whose names have been referred  
 “ to. Now, as a matter of policy and expediency, it may  
 “ well be that they have good reasons for treating those  
 “ other firms in the way they do; but with those consider-  
 “ ations the plaintiff in this action has nothing whatever to  
 “ do. That is exactly what Parliament has not left open to  
 “ railway companies to judge of—whether in that way they  
 “ will equalize their capacity for competing with other lines  
 “ or not.”

Lord BLACKBURN, in the course of his opinion, used this language: “ I quite agree that this is not done with  
 “ any view of injuring the respondent. It is done with a  
 “ view to coax some of the traffic which would otherwise  
 “ go upon the Midland Railway, to come to the appellants’  
 “ railway. It may be that it would have been provident  
 “ and proper on the part of the Legislature to say that  
 “ there should be an exception in such cases, in order to  
 “ induce traffic to go by a route different from that by  
 “ which it would otherwise have gone. However, it is not  
 “ what the Legislature has said. What the Legislature  
 “ has clearly said is, that the tolls must be charged equally  
 “ to all persons under the same circumstances. I think  
 “ that means under similar circumstances as to the goods,  
 “ not as to the person.”

*Same case*, 39 L. T. R. N. S. 306.

All the authorities were reviewed, and similar principles announced in a very recent case in the House of Lords, decided in 1885.

*Denaby Main Colliery Co. v. Manchester, etc.,  
 Railway Company*, 54 L. T. R. N. S. 1.

There are other matters involved in this case, but, among other things, it appeared that the railway company had carried coal along the same portion of its line to Grimsby, for persons who shipped coal to the West Indies

and to other ports, at a reduced charge, and that was held to be in violation of the Railway Clauses Consolidation Act of 1845.

Lord BLACKBURN, in discussing the question, said: "But I am unable to agree in their judgment as to the coal carried from the appellant's colliery to Grimsby, and there shipped on the American steamers, and the coal carried from the colliery to Grimsby and shipped to ports south of Harwich. I do not think that a desire, however *bona-fide*, to foster a new trade, can justify making a difference of charge on coals passing only over the same portion of the line of railway under the same circumstances. And I do not think that it makes any difference in the circumstances where the coals are delivered at Grimsby for shipment, that one parcel is shipped on a vessel bound for one port, and another parcel on a vessel bound for another."

Lord SELBORNE, formerly Lord Chancellor, used this language: "The questions as to the allowance of eight pence per ton to Bannister upon coal shipped by the Hamburg-American steamers, and the payment to him of six pence per ton upon coal shipped from Grimsby for ports south of Harwich, remain. To both these allowances the same principles appear to me to be applicable. I cannot think that the circumstances under which the six pence per ton was allowed, as stated in the special case, ought to make any difference. All these coals are proved to have been carried only over the same portion of the line and under the same circumstances as the plaintiff's coals. The motives and reasons for making these allowances are plainly not material as against the appellants' claim to have their coals carried on the same terms."

It would unduly extend this argument to fully state and comment upon the exact language of the various

English statutes, and to discuss at length the very able and instructive opinions upon them which were delivered in the cases already cited; but it may be noted in passing that the opinion of Lord Cranworth, in the case of *Finney*, 2 MacQ. 183, wherein he differed with Lord St. Leonards, is very much discredited by the opinions in the last case.

It may be remarked, and a more extended examination of the cases would fortify the conclusion that they established firmly the doctrine of the English courts, that a discrimination on the ground that a shipment is made under dissimilar circumstances and conditions, can only be justified when those circumstances relied upon relate to the carriage of the goods, and not to the circumstances of the shipper or consignor. And by parity of reasoning, the different location of the town or city with reference to the competition, either of water or rail, can not afford any ground whatever for such discrimination.

These decisions may fairly be said to establish, that under the true construction of sections 2, 3, and the first part of section 4, no discrimination whatever would be permitted, on the ground that the person or locality in whose favor the discrimination was made enjoyed the advantages of a line competing with that which makes the discrimination.

#### IV.

The argument of Mr. Smith before referred to asks this Commission to grant leave to the Southern roads to discriminate in six classes of cases. An examination of the first four classes will show that the only ground upon which such relief is sought is that the points between which it is desired to make a less charge for a long than for a short distance, are points where the railroads for whom application is made are brought into competition either with other rail or water lines, and it is fair to say, although

Mr. Smith, subscribing to the doctrine advanced by Mr. Fink, declares that there is no necessity for the application which he makes, because the right to make these discriminations exists in the railroad company; that under the qualifying clause we have considered, no such right whatever can be held to exist, in view of the cases cited.

The fifth case, in which application is made to charge less for transportation for a long distance than for a short distance, is a case where the differential circumstances are alleged to be the competition "of market with market and product with product;" as, for instance, where one town manufactures cotton goods in large quantities, and therefore might need cotton from another town where a great deal of cotton was stored and handled.

It is not deemed to be necessary to spend any time in discussing the proposition whether this is or is not within the inhibition of the law.

The sixth case, in which similar application is made, is with reference to freights to and from a city which is alleged to have been built up by a system of unjust discrimination against surrounding localities. It requires no argument to show that this is an application which might be properly addressed to this Commission, if the Commission possessed dispensing powers, which it has repeatedly and expressly disclaimed. Such an application can not be considered by any tribunal acting judicially.

These six classes of cases may be said, in a general way, to embrace practically all cases in which thus far application has been made to the Commission for relief under the fourth section of this act. It seems to be plain, that in every one of these cases to grant the relief prayed for would be a practical abrogation of other sections of the law.

The extent and variety of discrimination practiced by the carriers within the provisions of this act are no-

where more clearly shown than in the applications made for relief, and the arguments filed in support thereof.

It is undoubtedly true that the business and commerce of the country have adjusted themselves to these conditions. It is undoubtedly true that any sudden change will be productive of much inconvenience and some loss and injury, not merely to favored interests, but to the community at large. But if that be the ground upon which the power of the Commission, under the fourth section, is to be invoked, then it must be upon the theory that the law has vested in the Commission a dispensing power over this act, and it is for this Commission to say, acting as a legislative, and not as a judicial body, whether, in the judgment of the Commission, the evils alleged to be involved in the administration of the law overbalance the advantages which may be reasonably considered likely to follow upon its enforcement. But it is thought that that is exactly not the power which was intended to be vested in the Commission by the statute.

The language of the 4th section has been so often quoted that it is hardly necessary to quote it again; yet as it has sometimes been misquoted, it may perhaps be proper to notice the exact language used. The proviso to the 4th section is that "a common carrier may, *in special cases*, after investigation by the Commission, be authorized "to charge less for longer than for shorter distances for the "transportation of passengers or property, and the Commission may from time to time prescribe the extent to "which (not *a* but) *such* designated common carrier may "be relieved from the operation of this section of this act."

The ambiguity in the construction of this proviso arises on the language "in special cases." It is exceedingly difficult to say what special cases may hereafter arise which, when presented to the Commission, will authorize such action as has been invoked in the applications already made. But it is equally plain that none of the applications

now pending for relief under this clause make any "special case" within the meaning of the act.

The application on behalf of the Southern roads is for a virtual suspension of the act as to their entire lines, and as to all classes of freight, and a consideration of the argument by which that application is supported will show the far reaching effect which the exception even of one line might naturally be expected to have. If relief be granted simply because of water competition between two points where the relief is sought, then upon similar principles like relief should be granted where there is competition between two points by rail, upon a rate based upon the water rate between two other points; and if relief be afforded in such cases, then it should be granted in cases where there is simply rail competition upon like principles.

The obvious effect of establishing any such principle would be simply to nullify not merely section 4, but sections 2 and 3, which immediately precede it, and to open the door to every form of discrimination and unreasonable preference in a manner not contemplated by the law, nor justified by its terms. If competition between localities is a ground for relief under this section, then a railroad company is permitted, where such competition is by water, to increase the natural advantage which the point on the water line enjoys, as against other points not so favorably situated. If the competition be by rail, then a railroad company is permitted to increase the advantage which the favored point enjoys in having two lines of railroad, at the expense of local points on the line of the road making the discrimination. Now, it may be that there are reasons why this should be permitted. Indeed, it seems somewhat paradoxical to insist, in the interests of the public, that railways should not be permitted to compete with water ways, or other rail lines. But it is obvious that this is a question rather to be addressed to the law-making power than to a tribunal charged with its interpretation; and against all

such discrimination the law and the legislative purpose are plainly arrayed.

In this connection it may be instructive to consider the language employed by a parliamentary committee of England in considering the efforts made in that country to secure competition. A joint committee of Lords and Commons in 1874 used this language: "No means have yet been devised by which competition can be maintained, nor is there any reason to suppose that the progress of combination will cease until Great Britain is divided between a small number of great companies."

It is apparent, that by means of pools and traffic arrangements, which, as we learn by the daily papers and as Mr. Smith admits in his argument, the railroad companies continue to make since the passage of this law, competition is practically out of the question. In the transportation problem there is an element of a certain sort of competition, but so far as any fair, open, honest competition is concerned, it is an unknown quantity in the solution of the question.

Now, it is not the part of a court to decide cases until they are presented. It is not necessary for this Commission now to announce in what special cases it will or will not grant relief, under the proviso of the 4th section of this act. It is possible to conceive of such cases, as, for instance, should Chicago be destroyed by a conflagration similar to that which visited the city in 1871, the Commission might feel warranted in authorizing transportation companies, if they saw fit to make such application, to give Chicago a reduced rate for the transportation of building material.

And, again, where one railway company controls and operates two lines of different lengths between two terminal points, it might be proper, when the shorter line was very much crowded with traffic, to permit through freight to be sent by the longer line at the same rate as that charged on

the shorter line, without making corresponding reductions in the local tariff of the longer line. It is not strictly correct to say that necessarily the framers of the law had some special cases in view in making this provision. Rather would the inference be that the legislative power, mindful of the contingencies that so frequently occur, not contemplated at the time a law is enacted, attempted to provide a remedy which might be resorted to in case of any particular exigency or emergency thereafter arising, though none such was then in any definite form anticipated. The words "in special cases" are practically eliminated from the act by the construction sought to be applied by the railroads. But they are significant rather of this legislative purpose to provide against possible contingencies, than to lay down any general rule of action.

If this Commission will take the canons of construction laid down in the oft-quoted and weighty words of the Barons of the Exchequer in *Heydon's case* (3 Rep. 7), there can be but little difficulty in reaching a construction which disposes of all pending applications.

"For the sure and true interpretation of all statutes in general, be they penal or beneficial, restrictive or enlarging of the common law, four things are to be discerned and considered :

"1. What was the common law before the making of the act?

"2. What was the mischief and defect against which the common law did not provide?

"3. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and, 4thly, the true reason of the remedy?

"It was then held to be the duty of the judges at all times to make such construction as should suppress the mischief and advance the remedy; putting down *all subtle inventions and evasions for continuance of the mis-*



"*chief, et pro privato commodo*, and adding force and life "to the cure and remedy, according to the true intent of "the makers of the act, *pro bono publico*."

The last clause of section 4 seems to have been inserted to leave the matter of granting such authority to the common carriers applying in a special case, at all times within the control of the Commission, and subject, after leave granted, to revocation or modification, at the discretion of the Commission.

In addition to the special cases suggested, others may be imagined, but it is not necessary here to discuss them, nor is it probable that they can all now be anticipated. In the course of time cases will naturally arise where special application will be made for special relief, which may be fairly considered to be within the terms of this provision. But it is obvious that thus far there has been no application in a special case; but simply an attempt to invoke a general dispensing power to be exercised by the Commission over this fourth section, and the third as well, which would be destructive of the purpose and object of the law. It would, therefore, seem to be absolutely necessary for the Commission to deny all pending applications thus far made without prejudging any that may hereafter be submitted, and to give the law a fair trial before acting on the theory of its injurious and destructive character. It is exceedingly difficult to forecast the future, and the alarming prognostications of railroad managers as to the effect that this statute will have upon their interests and the country at large are to be received with great caution.

It is within the memory of all that when regulative legislation against railroads in various States was attempted some years ago, the railroads were loud in their declaration of the utter financial ruin and bankruptcy which must necessarily follow in the train of these enactments; and the writer distinctly remembers when Judge Davis, of the

Supreme Court of the United States, in the case of *Peck v. The Northwestern Railway Company*, heard at the Circuit, decided the law of one of the Western States, regulating the charges of railroad companies within that State, to be constitutional, that a distinguished lawyer and statesman, since deceased, arose and addressed the court, and with evidence of great feeling and sincerity announced that the two great corporations for whom he then appeared would be absolutely ruined and bankrupted by the enforcement of that law. The law was enforced until repealed, and the unfortunate clients for whom the learned counsel's sympathies were so warmly enlisted have continued to grow and increase until to-day they are the two largest railroads in the world, and their prosperity was never more firmly established than at the present moment.

It has not escaped the attention of this Commission, as well as that of the general public, that there has not thus far been any effort made in good faith by the railroads generally to obey this law, and there is a moral question involved here that cannot be entirely ignored. If this Commission possessed all the power which the railroads attributed to it, it would still be a grave question as to whether there was any propriety in an attempt to exercise it at the present time. There is a deep-seated conviction—whether well or ill-founded it matters not—that the railroads propose to antagonize and resist any law which may be enacted for their regulation. They have, in defiance of law, as is known, for many years maintained pooling agreements and arrangements, openly and ostentatiously. It is alleged that they have corrupted legislation; that they have subsidized boards of aldermen in cities, and that they have tampered with the administration of justice in the courts, in the effort to thwart and pervert the law. Certain it is, that in our great cities they enjoy franchises which have cost them nothing, except what may have been expended in the endeavor to persuade public servants to

betray their trusts, adequate compensation for which to the municipality would be nearly, if not quite, sufficient to pay all the expenses of municipal government.

It would be a salutary spectacle for the American people to see the railroads of this country obeying the law in the same spirit with which they insist that it shall be obeyed whenever their rights are threatened or assailed; and while questions of law, rather than political questions, are here involved, this tribunal, in the exercise of its discretionary power, may well consider whether it is not more truly serving the purpose of its creation in insisting upon a strict compliance with the law by the corporations which it was established to regulate and control, than it would be by any latitudinarian construction in impairing and nullifying the very objects which the framers of the law had in view, and which may properly be presumed to have been in the legislative mind in its enactment.

All that is said and can truly be said in favor of the service performed by railroads, is aside from the question. The people demand, and they have a right to demand, that railroads shall be faithful servants, and not good masters.

This argument is submitted on behalf of a corporate political organization, which has no pecuniary interest in this question, nor any end to serve further than to aid this Commission in reaching a sound and salutary construction of this act.

It did not seem wholly improper where there was no one appointed or provided for to appear against these applications, that such a body should ask to be heard against them. The law provides that any "body politic" may complain to the Commission, and that no complaint shall, at any time, be dismissed because of absence of direct damage to the complainant. (Section 13.) If this be the law, it would seem fitting for any body politic, without being in danger of any direct damage from

the ruling of the Commission, upon the complaint or application of another, to be permitted, in the discretion of the commission, to appear and be heard upon the propriety of allowing such complaint or application. There is no provision in the law providing anyone to oppose the application of carriers under section 4, and yet it would seem desirable that within reasonable bounds there should be opportunity afforded to do so:

It is also provided that the Commission may institute inquiry into matters sought to be regulated by the act; and in section 17, that the Commission may conduct its proceedings in a manner such as will best conduce to dispatch and the ends of justice. Section 21 also requires the Commission to file an annual report, and to recommend legislation; and section 19 provides for sessions in any part of the United States where the interest of the parties or public may require. It would thus appear that this subject is regarded as one of public concern, and it is hoped that it may not be deemed wholly unwarranted for the organization which this committee represents, under the circumstances, to address this Commission.

This argument has been prepared amid the engrossing cares of active, professional and commercial avocations. None are more conscious of its imperfections and shortcomings than this committee. But such as it is, it is submitted in the sincere conviction that the principles here sought to be maintained are such as should not be lost sight of in the decision of the questions now pending before this Commission.

Respectfully submitted,

S. S. GREGORY,  
 ERSKINE M. PHELPS,  
 JAMES A. MINER,  
 GEORGE J. BRINE,  
 C. L. BONNEY,

*Committee.*

# IN RE;

—THE—

WATER TRANSPORTATION INTERESTS.

---

ARGUMENT<sup>s</sup> SUBMITTED

IN OPPOSITION TO THE SUSPENSION OF SECTION 4, OF THE

INTERSTATE COMMERCE LAW.

---

In presenting this review of the investigation had by you, and our argument upon the same, it may be well, perhaps, first to explain some facts not fully appreciated. When railroads were built because of their need, and to sections not parallel with water courses, and before the day of pools, combines and syndicates, the competition between river and rail was legitimate, and the stronger of the two was never in a position to crush the weaker. In those days rates were equitable and non-discriminative, and it was not for one community to prosper, under ill-conditioned circumstances, at the cost of other communities, nor was it the custom to favor one individual, firm, corporation or locality as against another. In

those days the steamboat prospered ; but now, under the new dispensation, the system of pools, combines and syndicates, all is changed. Placed in a position almost greater than the law itself, rich from the treasure given by a generous and indulgent people and government, arrogant from self-importance, strong through combinations, greedy and grasping to an extreme, and believing that all rights, privileges and interests are not so great as their own, or else must be made subordinate thereto, the railroads have been enabled to slowly but surely dispossess the river of its prosperity, and the steamboat interest now languishes. In the day of its life and hope, the owners and employees of the steamboat were great in number, strong in organization, and their voice was heard. Now that they are so nearly within the grasp of their all-powerful enemy, they are without organization almost, few in numbers, and their voice is weak. The railroad, whose system and perfectness of organization—offensive and defensive—is the wonder of all, have been able successfully to use the power of its influence against all who are not for it, or of it, and the subtlety and extent of that influence, it has been insinuated, reached even to the interstate commerce act itself. Disheartened and weakened from the contest so long waged against that influence, finding from experience that it was a struggle of might more than of right, without means and without organization, without hope, and of the opinion, in common with others, that the haste and unanimity in which the force and application of the law had been arrested, precluded their cause almost from even a passing consideration,

the steamboatmen at first concluded to take no part in the investigation, but as the railroad developed its case, and true to past history, sought to distract attention, confuse and mislead the public mind, to misrepresent the steamboat, and hold it as a menace to those who were wavering, and besides, just a little encouraged by your invitation to appear, the steamboatmen, unprepared as they were, have taken a part in this investigation.

At this point it will be proper to again call the attention of the Commission to the actual relations as they exist between the steamboat and the railroad. It may be said that the part taken is not entirely disinterested; we acknowledge this, and briefly our position may be stated. In aid of the railroad lands have been expropriated, moneys voted, rights of way granted, blocks of land donated for business purposes, passage along and through river front and steamboat wharves allowed.

The rivers are free to the steamboat, it is true, but the government in preserving the navigation of these rivers has not done all that was desired, and the failure in which contributes largely to the prevailing high rates of insurance, and the costs, delays and hazards of navigation to an extent equaled only by the liked increased risks and delays occasioned by the numerous railroad bridges being built across the navigable highways. The statutes teem with enactments as hurtful and restrictive in character as it affects the build and management of a steamboat, as otherwise they are beneficial and indulgent to the railroad. The steamboat pays the same tax as the

railroad, but has besides to pay wharfage taxes, the railroad in itself is a close, rich and powerful corporation, while the steamboat is representative only of individual capital, and is held to accountabilities not attempted in general against a railroad. These are some of the conditions that make the railroad the stronger and the steamboat the weaker of the two, and these inequalities have been as detrimental to the one as beneficial to the other. The steamboatmen felt that while from causes beyond their control the condition were against them, and against which they have been contending with becoming grace, they had yet the right to feel exercised at the manner in which the railroad used its advantages against them, designedly with the purpose of piling up burdens and driving them from the field. Therefore, when Congress passed a law that dispossessed the railroad of that portion of its power, which had been so illy used, and made it impossible to practice longer its peculiar methods of pulling down or building up at will, they believed that favors should no longer be shown, and that the law should be enforced as impartially against it as the law had been enforced against the steamboat. The steamboatmen recognize, and are free to acknowledge all that has been accomplished through the development of the railroad, they appreciate its value and good, its necessity, popularity and need of fostering care, but the steamboat as well has qualities that must not be overlooked; it has, and may continue yet to play a useful part. The government, States, communities and individuals have prospered through the steamboat, it was the steamboatmen, the



owners, the masters, the crews of the water-craft on our rivers, lakes and seaboard—the first agencies in the transportation and more rapid transit of passengers and products, mails and treasure, along the great water courses and inland seas of our country, whose efforts and capital, enterprise and ingenuity, unaided by governmental subsidies, laid the foundations of the great cities on the Mississippi river and its confluents, and on the borders of the great lakes and sea coast, and developed the commerce of sections hitherto inaccessible.

The people have in the steamboat a certain and indispensable factor in the obtaining of and regulating cheap rates of transportation. The steamboat is also a value and good, a necessity and quality of popularity, and by the same token, needful of, and entitled to a fostering care, and if the decision of the Commission shall be in favor of the railroad, and adverse to the interests of the steamboat, we will yet hope, for we know that our cause is the cause of the people, and that justice will prevail, therefore are we justified in urging this before you even though our motives be those of self-interest.

All this admitted, however, it may still be asked are we before the Commission with clean hands. If the steamboat can carry so cheaply why should it complain because of the railroads underbidding for business, and does not the steamboat itself discriminate in rates? The radical difference between a railroad and a steamboat is that the one can suppress or neutralize competition, the other cannot; besides the railroad, the steamboat has rivalries among its own

to contend with. As a rule steamboats are owned by individuals, not corporations or syndicates, the average steamboatman is a free lance, who brooks not restraint; where one fails another is ready always to fill his place. When he believes that another elsewhere is doing better than himself, he forthwith packs up, so to speak, and goes for that other fellow. This is their history, and safe to say, always will be. There is an ever-present competition on rivers that keeps the rates at a minimum. Take the cotton trade of the lower Mississippi, for instance, running to and from points of shipment, there is the St. Louis and New Orleans Anchor Line, the St. Louis and Mississippi Valley (barge) Line, the Chas. P. Chouteau-Helena Line, the Southern Transportation (Ohio River) Line, the Memphis and Vicksburg Packet Company, the Greenville, Vicksburg and New Orleans packets, and numerous other steamboats running between local points. These interests, all separate and distinct from the other, and antagonistic, provoke a most active competition, that stands as a bar to maximum rates, but though they do have to carry cheap cotton, never yet have they been found in the position of the railroad, which, as quoted by Milton H. Smith, in his statement made before you :

"Can transport traffic and yield a profit at a rate that is less than the average cost,"

because their losses are ~~irrecoverable~~ <sup>unrecoverable</sup>. For example, according to statements made before you, the railroad takes cotton at 65 cents a bale from Memphis, at \$2 25 from Shaws's Station (non-competitive), and 50 cents from Vicksburg, an average of say

\$1 13 per bale. Now, to compete, and deducting the difference in insurance, the steamboat must take this cotton at 45 cents from Memphis, and 25 cents from Vicksburg, which with the maximum rate of \$1 00 from non-competitive points, gives her an average of 55 cents, as against \$1 13.

This is why the steamboat can prevail no longer against the railroad, and it was that this advantage might by them be retained which moved Mr. Henry Fink to declare before you in Washington, that :

“If they (the railroad) put up the through rates to a level with the local rates, they would lose their traffic, and that means bankruptcy. If they put down local rates, they could never get them back, and that, too, meant bankruptcy.

Though the same be impossible with the steamboat, the railroad must be allowed to recoup its losses in order to meet water competition, and under a system by which communities have suffered, but against the continuance of which the people have for years vainly protested, which protests have been renewed before the Commission in Washington, Atlanta, Mobile, New Orleans and Memphis, backed by data and proofs, which if examined carefully, would in itself show cause sufficient for the law's enforcement, and at the same time prove the ruling motive to be not any more to attract patronage, develop trade, or to meet competition than to cripple the steamboats and monopolize traffic, very much after the manner which Mr. Patterson, of the Memphis Exchange, put it, when he stated that of the cotton handled by Memphis, not over one-fourth was received, and less than one-fourth shipped by river.

We believe that the statements heard by you in

New Orleans, and at Memphis in particular, is sufficient at least, to show that the very existence of transportation by steamboat, as well as the best interests of the entire country will depend upon, and be the best subserved by the enforcement of the provisions of the section which has been temporarily suspended. A thoughtful and impartial review of the statements made before you at Memphis will prove this, and the whole of the testimony will show, after all, that it is not a question of competition as between water and rail, but the fact of a more powerful and favored rival crushing the other out of existence the more surely and profitably to enjoy the monopoly of traffic. How ! Not because of superior advantages, better facilities, lessening of time, shortening of distances, or like causes ; not because the railroad is the cheaper means of transit, for it is not, and was so acknowledged in Washington by Mr. Milton H. Smith, counsel for the Southern Railroad and Steamship Association, when he said in argument :

“The railroad company would prefer not to make the lower charge for the long haul, but to assess the people along the line of the road ratably, according to the distance which freight is carried ; but this is rendered impossible by the very nature of the case when railroads compete with water routes, because of the cheaper cost of transportation by water than by rail.”

It is not, therefore, a question, we say, of the “survival of the fittest,” but it is a question of whether you, in your conclusions, shall say, “we see no injustice in all this ; the railroads and those who live upon its favor, must receive the liberal though strained

construction of the law, even though other interests and sections do suffer and have protested.

At a meeting of railroad magnates and counsel, reported to have been held just after the passage of this act, and at the time when it was popularly supposed the law itself would be first applied and relief under it given after. It was promised that the act would be given a trial, and that time and the public should be the judges as to its wisdom, how that trial was made, and time and the public given the opportunity to judge of its wisdom, is best shown in the following declaration made by the Atlanta Chamber of Commerce, filed before you, and which reads :

“We will say that under the construction placed upon this clause of the law by the railroads operating in this territory, and the ruinous change in freight rates which they appeared to believe the law required, we unanimously favor the permanent suspension of the fourth section.”

“It is, perhaps, not out of place to add that the Atlanta Chamber of Commerce has always favored the enactment of the interstate commerce law, and construing the law now, as we believe to be its true intention, we feel that it can be made beneficial to both the railroads and the people. But in the (as we believe) strained interpretation by the railroad companies of the fourth section of the law, applying it alike to the large railway centres, trade distributing points, and all the small local stations and water tanks throughout the land, is an interpretation, in our opinion, not contemplated by the framers of the law, nor even permitted by the law itself.”

Encouraged by your indulgence, and the time allowed, they have lowered through or competitive rates, raised local or non-competitive rates, and otherwise disturbed the relations of trade, so that when your committee came to hear, the people would be in

the condition to say, rather than all of this give us back what we had.

The masterly and largely successful manner in which it has been attempted to make the act obnoxious, and to bring about this demonstration in favor of the permanent suspension of the fourth section is clearly shown all through the Memphis testimony, and in the very nature of many of the petitions there presented. Many of the Memphis witnesses testified in effect that they could only do business with far-distant competitive points so long as they obtained the rates prevailing at localities nearer situated to those points, and to whom such trade legitimately belonged. Others said that owing to the refusal of the railroad under this law to give them a special rate they were losing business and money. Now, it is hard to believe that the Commission will give serious thought to such testimony, or that such unnatural conditions shall be possessed of influence. We do not believe that you will rule that communities to whom trade legitimately belongs shall be dispossessed of it because a railroad so wills, or to favor communities less fortunately situated. In other words, and to quote from a memorial from the Merchants' Exchange of St. Louis to the State Legislature :

"We do not deprecate reasonable competition, but we do maintain that any system of transportation that thus taxes home industry to destruction for the benefit of far-off competition is unwise, unjust and not to be endured. Applying this view to our own State and city, we claim that with compulsory equitable rates to and from all parts of the State, developing the local traffic of the roads and the communities, the wealth and prosperity of the State will increase, and the city will be thereby

more benefited than under any schedule of freights discriminating in her favor. \* \* \* We claim the protection of our geographical position, and that the enforcement of the long and short haul clause will give us the first chance to control the trade of our own territory. This would prevent distant localities from dumping their surplus manufactures on us, and we have nothing to gain by returning the compliment. On the equitable adjustment of rates under the absolute prohibition of greater rates for a shorter haul, we can and will do more business and at better profit through better control of rapidly developing country near home, and the same will be true of other trade centres that have any natural and cultivated advantages. Points that have been boomed and can only be maintained by discrimination will, of course, suffer until they learn that the local trade fairly within the limits of their control must suffice. Railroads have no charter to build up one point at the expense of many others. They have done this, and will continue to do it unless the law prohibits it."

Or, as stated more briefly, by the Association of Warehouse and Cotton Commission Merchants of Atlanta in their protest made before you :

"That no custom should be permitted to divert the trade to other sections from its legitimate channels."

It was attempted at New Orleans and Memphis to make much out of the advance claimed to have been made in river rates. Now, as generally understood, the interstate commerce act is to regulate interstate commerce, and not to deal in detail with freights or traffic ; nor does section 4 deal with rates of freight except in the gross, or in so far as they may be made the means of discrimination, and just what was sought in bringing out the fact of an advance in river rates is hard to guess, unless, indeed, it be a cunning device to mislead and deceive, or to justify the railroad in its advance in rates already made or in con-

temptation, like, perhaps, unto the following circumstance: Anticipating your coming, charging the steamboatmen with having jumped up their rates on the first opportunity, and either with the intention of entrapping the steamboatmen, or the desire to still further bring the law into disfavor, but at the same time with an eye to the gain involved. Several of the large roads terminating at New Orleans thought it a good plan to make a combine on rates with the steamboat, and quietly they made proposals in accordance. How these propositions were put and met we read from the following affidavit:

### AFFIDAVIT—(Copy).

Mr. Jas. H. Wright, agent of the Southern Transportation Line, at New Orleans, being duly sworn, deposes and says, that on or about the ninth day of April, 1887, he was approached by the freight agents of the Illinois Central, the Mississippi Valley (L., N. O. and Texas Railroad), and the Louisville and Nashville Railroads, who proposed to him that he should enter into a combination to increase the rate of freight from New Orleans to Memphis, the rates to be about double what they were then charging; that this was immediately reported by affiant to the President of the Southern Transportation Line at Cincinnati, Ohio, and that upon receipt of answer, affiant notified said freight agents that he would not enter into the proposed combination.

Affiant further deposes and says, that on the 4th of April, 1887, the rate of freight on a barrel of molasses, from New Orleans to Memphis, by rail, was fifty cents; that on the 9th of April, said rate was increased to equal one dollar and two cents per barrel, by rail, and that, on the very next day after the receipt of affiant's answer declining to enter into the proposed combination, the rate was reduced back to fifty cents per barrel, as it was previously.

(Signed)

J. H. WRIGHT,

Agent Southern Transportation Line,

(Ohio River Steamboats).

Sworn to and subscribed before me, the 3d day of May, 1887.

CHAS. J. THEARD, Notary Public.



Now to develop the country, to open up and encourage trade, to assist struggling enterprises, to deal fairly with the people, to maintain their traffic with competitive points, the railroads say it must be left with us to make such rates as demanded, but if this cannot be, and we are to come under the law, then shall others suffer besides, and in what way this affidavit clearly shows, and it may have been through such like advances, though more cleverly suggested, that that preponderance of testimony in favor of and by the railroad, claimed to have been presented, was mainly induced.

Mr. Heilman, of Evansville, Ind., who told you that he was a large miller, brewer and shipper, but failed at the same time to tell you that he was largely interested in a railroad, testified that the enforcement of Section 4 would ruin his industries, that they could stand no advance in competitive rates ; but he did not tell you that the rate on a barrel of flour by rail from Evansville to an intermediate point was 70 cents, to New Orleans 32 cents, an average of 51 cents, and the steamboat to get this same flour had to carry it at an average of 27 cents. Yet Mr. Mitchell, a railroad agent at Evansville, and who testified after Mr. Heilman, said that steamboats fixed rates, and to which the railroad must conform closely or lose business. But even if this be true, it has also been just as conclusively shown that the railroad can strike a paying average all the same, further proof of which we offer in a statement made by Capt. Hamilton. Says the Captain :

## (AFFIDAVIT.)

Capt. James Hamilton, master of the Era No. 10, running between points on the Bœuf river and New Orleans, being duly sworn, deposes and says, that some time in June, 1886, he received a bull for shipment to Grand Bay, on the line of the Louisville and Nashville Railroad, via New Orleans; that he received \$5 freight for bringing this bull to New Orleans from Eason's ferry, on Bœuf river, a distance of about 600 miles; that affiant was requested to deliver the bull at the railroad depot in New Orleans and prepay the freight on same to Grand Bay; that he did so, and was presented with a freight bill of delivery from New Orleans to Grand Bay (about 125 miles from New Orleans), amounting to the sum of \$17.90.

Affiant further deposes that on expostulating at the enormity of the charge, he was told, in answer, first, that because of the railroad being released from risk, as in case of death, accident or escape, he was given a half rate; and secondly, that he was shipping the bull just a little too far; that if he knew any one in Scranton—a competitive point about six miles this side of Grand Bay—who would receive the bull and have it driven overland to destination, he (affiant) could ship it to Scranton for \$6; but that Grand Bay being a non-competitive point, he would have to pay the sum of \$17.90, which freight was paid by Capt. Hamilton, the affiant.

(Signed)

JAMES HAMILTON.

Sworn to and subscribed before me at New Orleans, this 13th day of May, 1887.

CHAS. J. THEARD,

Notary Public.

To have the law so construed as to continue them in such a position as this, is explanation sufficient of the extraordinary efforts being put forth, to make a case before the Commission.

In Washington Mr. Milton H. Smith said before you :

“ I think we can all agree that the act to regulate commerce was not intended to, and will not, necessarily, increase transportation charges.”

Yet much of the testimony taken before you, particularly at Memphis, was to the effect that the charges for transportation had been increased notwithstanding. W. T. Boardman, who resides on the line of the Louisville and Nashville road, of which Mr. Smith is a prominent representative, testifies :

(AFFIDAVIT.)

William T. Boardman, being duly sworn, deposes and says, that he resides at Bay St. Louis, in the State of Mississippi, on the line of the Louisville and Nashville Railroad, about 52 miles from the city of New Orleans, State of Louisiana; that before the act of Congress known as the Interstate Commerce Law was adopted and went into effect, the rate of freight charged by said railroad from New Orleans to Bay St. Louis was 10 cents per 100, as shown by the bill attached and made part of this affidavit; but that since the adoption of said law, said rate of freight has been increased from 10 cents to 35 cents per hundred, as shown by the other bill attached to and made part of this affidavit.

W. T. BOARDMAN.

Sworn to and subscribed before me, at New Orleans, La., this 12th day of May, 1887.

CHAS. J. THEARD,

Notary Public.

Perhaps it was through such means as this and already suggested that some were induced to sign the many petitions presented through the railroad at Memphis, they, in the words of one of the Commission, "preferring the ills that were, to others they knew not of."

Therefore the railroad and many of its favored patrons have urged you to make permanent the suspension of section 4, and from the first have claimed that such would be your conclusion. They say the evidence in support of their petition preponderates, and there-

fore you cannot but grant their prayer ; they want you to practically nullify a law ; they want authority from you to do that which Congress by a very decisive vote has forbidden them to do ; they are pressing upon you such a construction of one section as will practically repeal the law, in preference to that sound legal construction which will make each section consistent with every other, and give effect to the act as an entirety.

They know that section 3 of the act renders impossible in law and logic the interpretation assumed by them of the words "under substantially similar circumstances" contained in section 4, but they want all the same to be continued in the right to discriminate, even though discrimination be expressly forbidden. They want you to ignore the truth as expressed in the protest filed before you in New Orleans by the Louisiana State Agricultural Society that :

"The principle of equity in railroad charges for transportation, under like conditions established by law, is equitable and just, and should be rigidly enforced in the manner and form indicated by Congress; and that the power to suspend the operation of the law should be exercised only in special cases and for motives affecting public and not private interests."

And they would have you set aside the fact urged also by that association :

"That the special cases referred to in said fourth section of the Interstate Commerce Act do not embrace competition by waterways, which is a general cause operating by reason of natural laws of commerce and not from any special circumstances requiring investigation, but the special cases referred to in said act are those requiring investigation, and arising from exceptional causes affecting public interests and having no relation to the question whether railroad corporations can or cannot make money in competition with water routes."

Now we would have you rule instead that the interests of others than the railroad and its favored patrons require a fair and impartial treatment of persons and localities ; that to each community should be allowed such advantages as the undisturbed laws of commerce bring them, and that all discriminating and unequal rates obstruct the natural laws of trade and are injurious to the permanent welfare of the country, and that the effort to bring freight under like conditions from a distant point at cheaper rates than from a nearer point is to defy the laws of nature and to create wealth in favored and poverty in unfavored localities.

Therefore, these premises considered, we ask that you reverse the action had by you in suspending section 4 of the act, or until such a time as the effect of the enforcement of the act in its entirety shall demonstrate the wisdom of the law, and the course to be pursued.

Respectfully submitted,  
NEW ORLEANS, May 14, 1887.

*B. Woods*  
*J. W. Bryant* Chairman  
*Chas. W. Brown* Secretary  
 Steamboatmen Association



*To the Members of the*

## Inter-State Commerce Commission.

---

I assume that it was not the intention of Congress, in passing the Inter-State Commerce law, to wreck weak, struggling, local railroads, nor to compel them to abandon through freight unless they would consent to local rates so low as to be ruinous. I assume, also, that it was not the intention to prevent the successful application to the carrying trade, of just and well-established business principles; nor to revolutionize fair, equitable and long-practiced business methods; nor to take away the benefits of competition in transportation which cities and communities have struggled for years at great expense to secure; nor to destroy the prosperity of commercial centers, that is due to their geographical position, combined with the enterprise and liberality of their inhabitants. I assume, with equal confidence, that you, as the interpreters and administrators of this law, do not desire that these results shall follow in the wake of your administration. And yet, it cannot have escaped your notice that widespread apprehension already exists, and that vigorous efforts are already directed to warding off these unintended but no less disastrous consequences of a rigid enforcement of section four of said bill.

Under existing circumstances, all applications to your Board, for the present, must largely be gropings in the dark. I have the honor to represent the Terre Haute & Peoria Railroad, and the Board of Trade of the City of Peoria. Should you decide that through freight shipped from points *having* railroad and water competition, or having railroad competition only, is not shipped under "substantially similar circumstances and conditions" as freight shipped from points having *no* competition, then the "long and short haul" clause of Section Four, would not affect the Terre Haute & Peoria Railroad nor the City of Peoria, and in such case, neither would have any relief to ask, for in such case neither would be obstructed by the law in the prosecution of its business.

But if it should be held that the words "similar circumstances and conditions" do not refer to circumstances and conditions of competition, but refer to other facts and environments, then the Terre Haute & Peoria Railroad will be, by the enforcement of the long and short haul clause of Section Four, seriously hindered in the prosecution of its legitimate business, and prays to be excepted from this clause. The grain trade of the City of Peoria depends upon the unrestricted operation and free competition of the roads carrying its east-bound freight. The Peoria Board of Trade therefore unites with the Terre Haute, and all other railroads leading eastward from Peoria, that ask to be excepted, in praying that their petition may be granted. The grounds upon which this prayer is made are briefly as follows:

The grain raising section of this country is of such vast extent that in order to market the crops in an economical and satisfactory manner, it has been found necessary to have points of accumulation and distribution. These have developed with the settlement of the country and have been located by the force of natural causes. They are nearly all situated on a navigable body of water, they have ample railroad communications, and are terminal points. As they grow, other agencies and instrumentalities become necessary for the transaction of the business of receiving and distributing, and these agencies are supplied. Such are ample elevators and warehouses for storing grain, authorized to issue warehouse receipts, upon which money is advanced by the banks and which are recognized by the courts as part of the commercial paper of the country. Such are, also, business organizations known as Boards of Trade, whose functions are to gather together the daily quotations of other markets, to send their own abroad, to provide a suitable building for holding daily sessions, to establish grades of grain and appoint officials to do the grading, to seek out markets where shipments may be made, to adopt rules for the government of business, and to select committees under the authority of the state to hear and adjust such differences as may be referred to them.

At an early day natural causes made Peoria one of these centers of reception and distribution. Before the era of railroads grain was hauled to this point from long distances and shipped by water to distant markets. The same causes made it an important



railroad center. Twelve railroads already radiate from it, while others are in process of building and will enter the city during the present year. But one of these passes through it; to the others it is a terminal point. It is on the shortest line of railway carriage for the productions of Southern Iowa and Nebraska, for Northern Kansas and Missouri, and for Central Illinois. For the cereals coming eastward from this wide section, by way of Peoria, it is as much a terminal point as are St. Louis and Chicago for grain coming eastward through these cities. The demands of business ~~has~~ required the erection of warehouses and elevators, and it has these with a storage capacity of 2,500,000 bushels. It has a permanent Board of Trade, with a membership of one hundred and twenty members, which has been in successful and continuous operation for seventeen years. It has water communication by way of the Illinois and Mississippi Rivers to the South and West, and by way of the Illinois River and the Illinois and Michigan Canal to the great lakes to the East. It has an established barge line for the transportation of grain by the river and canal, which affords direct water competition with the railroads to eastern markets. Measured by the amount of grain shipped East by rail, it ranks next to Chicago among western cities. The statistics of grain carried eastward by rail from the four largest shipping points for the last ten years are as follows:

	<i>Bushels.</i>
From Chicago .....	509,500,463
“ Peoria.....	162,403,800
“ St. Louis .....	96,829,406
“ Milwaukee .....	62,999,486

Corn, oats and rye are the principal cereals handled at Peoria. The following table shows the receipts and shipments in bushels by water and rail, of these grains, for the year 1886, at the eight leading grain centers of the West:

	<i>Receipts.</i>	<i>Shipments.</i>
Chicago .....	103,792,850	89,358,230
St. Louis.....	24,261,830	14,950,935
Peoria .....	19,137,230	15,217,590
Toledo .....	14,805,190	13,937,590
Kansas City.....	6,652,970	4,544,943
Milwaukee.....	3,013,940	594,760
Cincinnati.....	10,192,540	5,473,680
Detroit.....	4,588,230	3,365,708

The following table shows the movement of oats alone at Peoria for the year 1886:

	<i>Receipts.</i>	<i>Shipments.</i>
Chicago.....	39,976,315	32,164,200
Peoria.....	13,182,670	11,729,205
St. Louis.....	7,426,915	2,764,922
Cincinnati.....	4,066,131	2,563,413
Milwaukee.....	2,073,000	388,361
Toledo.....	1,966,915	1,764,088
Detroit.....	1,893,206	1,121,298
Kansas City.....	1,646,536	909,489

It will be seen that, leaving out Chicago, Peoria shipped more oats than all of the above named markets combined.

In addition to these shipments of grain, there are immense shipments of the products of grain. Peoria is the greatest distilling center in the world. For the last fiscal year there was paid into the United States treasury by the collector of internal revenue at Peoria, over thirteen millions of dollars, being a larger sum than was paid as a tax upon distilled spirits by any other collection district in the United States. Her mills, starch factories, glucose works and distilleries have a manufacturing capacity of over 50,000 bushels of grain a day. Their products mainly seek eastern markets by railroad transportation.

There is one other feature of the grain business at Peoria that should not be overlooked. It is in fact peculiar to this market. It is not an option market. Its sales are legitimate and *bona fide*. Grain is bought and sold both by grade and by sample. In option markets deals are by grade alone. This peculiarity has made Peoria the great distributing point for the interior grain trade of the United States. Chicago ships more grain to the seaboard for export than Peoria. But Peoria ships more grain to the interior markets of New England and the Eastern States than Chicago. This results largely from the fact that purchases can be made at Peoria by sample instead of by grade. Take corn for instance. *Grade No. 2 Mixed* may be two-thirds white and one-third yellow. This would suit the Southern trade, where white corn has the preference. But *Grade No. 2 Mixed* may also be two-thirds yellow and one-third white. This would not suit the Southern trade, but would suit the New England, where they prefer the yellow to the white. Now customers in these markets, ordering from a dis-

tributing point where sales are made by grades alone, can never tell whether their orders will be filled with a mixed corn where white predominates or with a mixed corn where yellow predominates. They prefer then a distributing point where they can buy by sample, and know exactly what they are buying. The same advantage accrues to sellers. They get the advantage in selling by sample, of receiving what their grain is intrinsically worth, and of doing business through a receiving and distributing point that meets by sample the exact wants of purchasers, and thereby is enabled to pay a fraction more for the exact grain that will fill these wants.

There is more in this peculiarity of the Peoria grain market than may be apparent to you at first mention. It has become a part of the established methods of business between interior purchasing points from Maine to New Orleans, and Peoria, the chief distributing center for these points. A radical change in transactions, that will drive the local roads at either end of the line out of the through carrying trade, and limit them to local business alone, will take away the power of Peoria and of Peoria roads to continue this traffic. It will bring delay into inter-state commerce where there is now despatch, and confusion where there is now simplicity. It will disorganize and overturn a business that has been developed into hundreds of millions, by the survival of methods that have stood the test of experience, and substitute for them an arbitrary decretal, unyielding, perplexing, destructive, and revolutionary.

These are the facts then, in brief, in reference to Peoria as a receiving and distributing point. Railways have sought connection with her in view of these facts. The competition created by the building of these roads in both bringing grain to her market and in carrying it thence to other markets on the seaboard and in the Eastern and New England States, has been to the benefit of the producer, the consumer, the shipper, and the carrier. It has brought producers and consumers closer together to the mutual advantage of each. It has furnished agencies, and instrumentalities, that have sought customers and found markets that would not have been discovered by local dealers at non-competitive points. It has furnished to the railroads carrying east-bound freight, a large and stable amount of business, with the best modern facili-

ties for handling, on account of which they have been able to take and carry it, at a much less cost, than when the volume is small, the supply irregular, and the expense of loading and unloading greater.

The railroads east desire to continue to carry through freight. The City of Peoria desires to retain the advantages of competition by and between all of these roads. It is the life of her business, and the cause of its own wonderful growth. But this competition cannot be retained if the "long and short haul" provision is applied to her east-bound freights. A tariff of through rates has been agreed upon by the trunk lines and is now in force, making 25 cents a hundred the rate from Chicago. Taking the Chicago rate as a basis, the rate from Peoria is made 10 per cent. higher, or  $27\frac{1}{2}$  cents. This through rate is not complained of as excessive. Still it is as high as east-bound freight from Peoria will bear, without being diverted to the water-route by way of the Illinois River and Canal, or to other lines of railroad. But at this rate,  $27\frac{1}{2}$  per hundred, the roads east cannot make a schedule of local rates that will not be ruinous. They will be compelled to abandon through business, or to fix rates so high that through business will seek other channels, which is the same thing in effect, and to confine themselves to local traffic. The Terre Haute & Peoria Railroad is one of these roads and is in this exact predicament. Every withdrawal from through business lessens competition and injures not only the City of Peoria, but the whole country tributary thereto.

In addition to this, an element of uncertainty is introduced which cannot be avoided. The present rate from Chicago, as stated before, is twenty-five cents a hundred. But it is the experience of years that as soon as lake navigation becomes active, rail rates from Chicago will be lowered to meet this competition. Rail rates will fall to twenty cents per hundred, perhaps much lower, as they have done heretofore. A corresponding reduction always follows from Peoria, because it is in water connection with Chicago. The competition between water and rail that exists at Chicago differs from that at Peoria in extent only, not in character. The roads must meet this decline or see their through freight diverted. But if, at  $27\frac{1}{2}$  cents a hundred, local rates under section four have to be reduced below existing rates, when existing rates with through business combined pay no net earnings, what will be

the condition when there is a decline from  $27\frac{1}{2}$  to 20 cents, or even less? With each local road the situation resolves itself into this: Whenever it pays better to do local business at local rates, rather than to do both through and local business under the restrictions of the Inter-State Commerce law, the through traffic will be abandoned and the local traffic retained. No one will be benefited thereby, but many will be injured. We believe that it was to prevent such complications, and to relieve common carriers from the embarrassments that arise under such contingencies, that the power of exception was vested in your Board. While in terms it seems that the application for exception must come from the common carrier, the city or shipping point is as much interested as the carrier, and the granting of an exception to one carrier from a given point upon the grounds of water competition or for other reasons alleged herein, would, in effect, be granting an exception to the city or shipping point from which that carrier does business.

In this connection, I desire to call attention to the conclusions to be drawn from the exhibits attached to the petition of the Terre Haute & Peoria Railroad. They are:—

First. That the local rates are fair and equitable as pronounced by the Illinois Board of Railroad Commissioners. Hence there is no demand for a reduction of these rates.

Second. The small proportion or per cent. of the total  $27\frac{1}{2}$  per hundred allowed to the Terre Haute & Peoria Railroad for its share of the haul upon through freight.

Third. That for the year 1886 at these local rates, combined with the rates at which grain was billed through from local points together with the through rates from Peoria at  $27\frac{1}{2}$  cents, and all revenues from other sources, there were no net earnings for the road.

Fourth. The approximate reduction that will follow upon the basis of a  $27\frac{1}{2}$  through rate, if the "long and short haul" clause is enforced.

It may throw more light upon the situation, both as to the claims of the Terre Haute & Peoria Railroad and of the City of Peoria to be excepted as before prayed, to state that all grain going East from Peoria has already paid local freight rates. This comes from the fact that grain seeking this market from the West is billed from local stations to Peoria. The roads entering here from the West make this a terminal point. It is not then as if

grain shipped from here had been collected by wagons or by water even. The local rates paid upon grain shipped here from the West, plus the through rates from here to Eastern markets, always have been, and always will be, higher than through rates from local points eastward in the States that are East of us. No injustice then is done to these last named local points. Their relation to Peoria is the same as the relation of points east of Chicago and St. Louis to these two great centers. Grain comes to Peoria as a central point of distribution the same in character as Chicago and St. Louis. When Peoria loses this character, which it inevitably must if it loses the power to distribute by rail eastward, billing to destination, by reason of the roads ceasing to compete for through freight and confining themselves to local business, it becomes in turn a local station, and ceases to be a receiving and distributing center. No one desires this. The railroads want to continue to carry through freight east from here. The producers, consumers, and shippers want them to continue to carry it. No local point loses anything by its continuance. Why then should they be compelled to abandon it? The law clearly contemplates that under such circumstances an exception to its operation may be granted by your Board. It is this exception that is prayed by the Terre Haute & Peoria Railroad. Its local rates conform to the state law of Illinois. There is no claim that they are unjust or unreasonable. There is no claim that through rates from local points east of Peoria on its line are unjust and unreasonable. But they are higher than the rates for through freight from Peoria that the road must accept if it secures any share of this class of traffic. Heretofore it has received its fair share of through business and maintained its local rates, and yet has paid nothing to its investors. It petitions for an exception under the law that will allow it to continue to struggle to reach a paying basis, without being compelled to relinquish a part of its already insufficient revenues.

N. E. WORTHINGTON,

*Attorney for Terre Haute & Peoria Railroad.*

TO THE  
HONORABLE COMMISSIONERS

APPOINTED UNDER THE  
INTER-STATE COMMERCE ACT.

---

*Mr. Chairman and Gentlemen :*

The undersigned, a Committee of the Chamber of Commerce of Danville, Va., an organization formed to promote the business and prosperity of our city and country adjacent, and to further the just purposes of trade and commerce, beg to represent to your honorable body :

That Danville is a young and growing city of some twelve or fifteen thousand people, situated in Pittsylvania county, Virginia, and in the centre of the fine tobacco-producing regions of Virginia and North Carolina. That at the close of the late war Danville had a population of less than three thousand—its business had been destroyed, its people impoverished, and its adjacent country presented almost a scene of desolation.

With a recuperative energy wonderful to contemplate, our people commenced life anew, and not only rebuilt their waste places, but extended and enlarged their manufacturing, mechanical, and mercantile enterprises until Danville became known and esteemed as one of the handsomest, best built and most enterprising cities in the South.

Thousands of workmen, mechanics and operatives are engaged in our several enterprises. During the last year nearly thirteen million (\$13,000,000) dollars were used in the conduct and maintenance of said business. In the tobacco trade alone, forty million (40,000,000) pounds were sold here the last year, and at a higher average price than shown by any other market in the United States.

These results were obtained only by hard labor, push and enterprise coupled with such advantages and facilities as we in great measure compelled to our aid. For a long time we had only one railroad—the Richmond and Danville. We soon found that ruinous transportation and freight rates were charged us by that line. As a consequence, our energies and trade facilities were greatly crippled, until our people, with extraordinary boldness and liberality, a few years ago, compelled the building of a line of road between Danville and Lynchburg, Va., called at first and until absorbed by the Virginia Midland, with which it connected, the Lynchburg and Danville railroad. In consequence of the competition thus built up, just transportation and freight rates were accorded to us, and our city and country greatly prospered. As we have said, the Midland by some means absorbed the Lynchburg and Danville road. Then the Midland went into liquidation, or something else, and in turn was two or three years ago absorbed, or “gobbled,” by the Richmond and Danville—thus we are again in the hands of that voracious monopoly (and its connections,) which has shown neither liberality nor a spirit of accommodation, although it was inaugurated and in great part built by the brains, means and energy of this very community.

Since we have been deprived of a competing line of road, freight rates have been greatly advanced, and our people put to much trouble and costs, not only by high charges for transportation and freight rates, but by reason of unjust discrimination against us in all trade relations. In fact the discriminations by the Richmond and Danville railroad and its connections, have been of such marked character against us, that our trade has been greatly injured and damaged, in many instances broken up, and our interests warred upon to such an extent that unless a remedy can be found, commercial ruin will be the fate of many of our industries. As a matter of fact, high charges and discriminations by railroads have driven from Danville some of our best business and business men.



To make the matter plain, we beg to call your attention to certain facts which speak for themselves. Before the Midland road got under the control of the Danville road, the merchants and traders of Danville drove a large business in grain, bulk meat, and heavy goods generally, with all points South in Virginia, North and South Carolina and beyond. Now that trade is quite destroyed because those roads grant better rates, and afford greater facilities to points North of us, and at greater distance from our late fields of trade, than are accorded to us. For example: Lard by the car-load is shipped from St. Louis to Richmond, Petersburg or Norfolk, and re-shipped thence say to Durham or Raleigh, N. C., much greater distances, at about the same price as to Danville. Flour in sacks, per car from Grand Rapids, Michigan, to Lynchburg,—miles, costs in freight charges \$75.00; while to Danville, only 66 miles farther, the charge is \$114.00, or fully 33½ per cent. more in proportion. 125 barrels flour from the same point to Lynchburg costs \$50.00, the same to Danville \$86.25. Grain shipped from Chicago via Richmond, or say re-shipped at Richmond to Durham, costs about 43c. per cwt.; to Danville thence to Durham, much shorter distance, costs about 49c. per cwt. In fact, the rates accorded to Richmond from Chicago enable shippers to place goods at Charlotte, Greensboro, Durham, or Raleigh, N. C., cheaper than they can be placed from Danville, although there is a difference of over two hundred miles distance in favor of Danville. Upon heavy iron goods the rates to Danville are from \$4 to \$5 per ton greater than those charged to Lynchburg or Richmond, and the charges upon coal to Danville are almost double those charged Lynchburg and Richmond. A Danville man was charged \$242.00 freight for *two* car-loads horses—\$121 per car. A man from Charlotte, N. C., at the same time, and by the same train, was charged for *one* car-load horses \$110. Charlotte is 141 miles south of Danville. We specify these things only to attract your attention to the subject, but will present proof of these and other matters. We are oppressed by reason of the matters aforesaid, and we

know not where to appeal except to that tribunal created by Congress for the redress of such wrongs as are meted out to us.

We are advised that the "Act for the regulation of commerce" passed by the last Congress, was so passed to prevent unjust discrimination in the matters of freight and transportation, and the imposition of wrong by excessive charges or otherwise, upon the trading and travelling public, by common carriers. To you, gentlemen, were entrusted the power and authority to investigate complaints, and in proper cases to compel obedience to law.

In behalf of our people we charge that the Richmond and Danville Railroad, the Virginia Midland road and their connecting lines between Danville and St. Louis, Missouri, Danville and Chicago, Danville and Cincinnati, Danville and Grand Rapids, Michigan, Danville and Mansfield, Ohio, Danville and New York, Danville and other points north, south, and west, have violated the 1st, 2d, 3d, and other sections of the "Inter-State Commerce" Act.

They have charged us and our people exorbitant rates for the handling and transportation of our goods.

They have, by means direct and indirect, made special rates, rebates and drawbacks in favor of other persons and localities which they have denied to us.

They have discriminated in their freight charges in favor of other persons and places, and against us and our section.

They have charged other persons and localities less for long than they have us and our locality for short hauls; and, in fact, have used such unjust and discriminating measures against us, our locality and people, as to paralyze our trade, cripple our enterprise, and render nugatory all our efforts to compete with others possessing less financial and natural advantages. We have protested to the authorities of both the Danville and Midland roads, against these wrongs, to no purpose.

We now lay our protest before you, Gentlemen Commissioners, against these violations of just trade regulations and

the law which was intended for the protection of the great commercial public.

We humbly submit that the operations of the 4th sections of the "Act for the regulation of commerce" aforementioned SHOULD NOT be suspended, or practically nullified, but that the same should be executed with that force and vigor intended by the Congress which passed it. The clamor for its suspension comes mainly from Railroad corporations whose grasping propensities, and inexorable demands, it was the intention of Congress to curb in the interest of the people, or from Competitive points long separated from each other, which prosper upon the hardships inflicted by their allies, the Railroads, upon intermediate points not favored by a competitive system.

One grant of favor in behalf of the Railroads and Competitive points, by suspending the operations of said section will be availed of as a basis for other and increased demands, and in the end it will appear that the great objects aimed at by Congress will not be attained, and the law itself, though reasonably clear and fair, will be converted into a measure for the oppression of those whose rights it was designed to protect.

Very respectfully submitted,

B. S. CREWS, *Ch'm'n Trans. Com.*  
JAS. E. SCHOOLFIELD,  
D. A. OVERBEY.

DANVILLE, VA., *May 10th*, 1887.



# Inter-State Commerce Commission.

---

IN THE MATTER OF THE PETITIONS

OF

THE SOUTHERN PACIFIC COMPANY,  
ATCHESON, TOPEKA AND SANTA FE  
R. R. Co.,

ST. LOUIS AND SAN FRANCISCO R. R. Co.,  
UNION PACIFIC R. R. Co.,  
THE NORTHERN PACIFIC R. R. Co.

---

**Statement and Points, in Opposition to  
above Applications, by E. N. Taft, Esq.,  
Counsel for Sutton & Co., of New York.**

## THE NATURE OF THE APPLICATIONS.

These applications are made under the proviso of section 4 of the act, which is as follows: "Provided, however, that upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the commission may from time to time prescribe the extent to which said designated common carrier may be relieved from the operation of this section of the act.

What is asked for by the applicants under this section, is not the sanction of this Commission to specified

lower rates on specified classes of goods, to and from the points indicated, but an absolute and permanent suspension of section 4 in favor of the petitioners at such points. At the outset of the introduction of the petition of the Southern Pacific Company, by Mr. Tweed, the following occurred between him and the President of the Commission.

“PRESIDENT COOLEY: Did you bring with you a statement of the rates which you desired the Commission to determine?”

“MR. TWEED: No, sir; for this reason. If we should bring in a competitive rate before the Commission with an application to be allowed to charge that rate, and our application should be granted to-morrow, that rate would be cut by the Canadian Pacific, so that the relief which we should derive would be purely temporary and wholly illusive. That is to say, that business can only be done by giving us as free a foot as our competitors have and authorizing us to do that competitive business, if it can be done by us, in competition with the other existing methods, and yet at rates which would pay us anything at all above the cost of actually doing the business.”

It will be observed that the proviso declares that “the Commission may *from time to time* prescribe the extent, etc.,” from which it appears that, *if the Commission have the power to authorize charging less for the longer distance than for the shorter distance in consequence of the existence of competition* in the case of the longer distance, all competitors must see that, in the case of unreasonable cutting of rates by them, the Commission can at all times authorize a reduction of rates, so as to meet such cutting, and that thus the subject of competition is under the control of the Commission; and it is to be presumed that all competitors recognizing this power of the Commission would be disposed to come into accord with the views of the Commission in respect to what should be reasonable rates. This particular clause, “*from time to time*,” does not seem to have impressed itself upon the minds of the petitioners, or if otherwise, why are they unwilling to have the matter

kept under the supervision of the Commission, but leaving them free at any time to ask the sanction of the Commission for any proposed reduction of rates for long haul distances below what the Statute permits, and why are they seeking to be left entirely free from the operation of the Statute and at liberty to do as they think fit; in other words, to be left at liberty to enter into any war of rates hereafter to the same extent that they have done heretofore.

The war of rates during 1886 was not exceptional. It was but one instance of undue competition. And it is fairly to be considered whether the conduct of the managers of these railroad lines in respect to the matter of competition in the past has been such as to incline the Commission to the granting of such absolute freedom as they now seek to obtain, and whether, in case the Commission should be of the opinion that competition *can be such* in any instance as to constitute a special case within the meaning of the proviso, the commission will not confine itself to the direct and specific work of sanctioning tariffs of rates with such departures from the statute in the case of longer distances as they may think just, and as may be clearly expressed, in the tariffs that may be approved by the Commission.

•

#### THE CHARACTER OF THE EVIDENCE PRODUCED.

The nature of the applications being such as is above described, the applicants have presented their cases in the most general way, and have shown little attention to the convenience even of the Commission by neglecting to place distinctly before the Commission in figures and classifications the changes which they desire to make. Repeated inquiries for tariffs of rates, I observe, have been made in the course of the proceedings, but they did not seem to have been at hand for immediate reference, and the promise has been made in one or more instances to send in the tariffs of rates asked for to the Commission. Giving these railroad managers credit for the shrewdness and tact and skill in

management which they have undoubtedly acquired, it would seem as though they did not care to have the Commission go beyond such general view of the situation, as they have chosen to present. Indeed they seemed to me to have treated the matter rather lightly, and to have calculated upon going on without any very stringent scrutiny.

They have evidently assumed that the proceeding was one that was *ex parte* in its nature. They have produced their own petitions, made their own statements and examined witnesses powerfully interested in favor of the applications, and whose testimony has been given upon information which they assumed to have, but which was, in many instances, purely conjectural and misleading.

As for instance, in the matter of the smallness of the through business which was done after the adoption of the new tariffs since the act went into effect, the two witnesses who were examined at the first hearing before the Commission made this fact the strong ground for action on the part of the Commission; whereas Mr. Stubbs, who has been recently examined, tells the Commission that there was very little shipping to be done during the time between the adoption of the new tariff of rates and the order of the Commission granting relief, for two reasons, one was that in anticipation of the act taking effect, shipments had been very largely made, leaving very much less to be done immediately after the act went into operation, and again what little there was of this was held back in anticipation of lower rates arising from the expected suspension of the operation of section 4. This shows how much allowance must be made in case of representations made by parties who are eagerly seeking to obtain an important object. Then again the cry that the Canadian Pacific was to get all the business was regarded by the petitioners as one that would have very great weight with the Commission, and that was put forward in the most positive way, but yet it will appear that the more searching examination to which members of the Commission subjected Mr. Stubbs,



bringing out some of the salient points in regard to distance and connections with American roads, presented that matter of the Canadian Pacific rather in the nature of a bugbear.

## HOW THE LAW CAME TO BE PASSED.

It is very clear that the agitations which led to the passage of this act grew very largely out of the unscrupulous methods in which railroad corporations were made to subserve the interests of favored persons or localities, and the recklessness with which competition was very often carried on. Indeed the unjust discriminations complained of arose very largely from these methods and this competition, and hence it was that the effort was made to get at some rule which would constitute an outside limit that the carrier should not over pass, and hence it was also that the penalties of the act were made so very stringent. It is entirely apparent from the terms of the act that Congress recognized that the *devices* of railroad managers were many and often times *past finding out*, so that when these railroad managers come before the Commission with an object in view on which they have set their hearts, it is but fair to presume that they will state their cases as strongly and indeed more strongly than the whole truth of the case would warrant. But on the other hand, it is also equally apparent that, as they are stating matters which concern themselves, the means which the general public has for detecting errors or partial statements are comparatively limited.

## COMPETITION vs. DISCRIMINATION.

The case sought to be made is that *discrimination* which it was the object of the statute to prevent should be allowed in order to permit *free and unrestricted competition*. Now, as to this matter of competition of railroads, I find some instructive words in the "report of

the advisory committee on differential rates between the West and Seaboard," consisting of Messrs. Thurman, Washburne and Cooley, in 1882. In this report the committee say :

" We have found, however, in the course of our investigations, that a species of competition has prevailed from time to time, which has brought satisfaction to few persons, if any, and which has resulted in inequalities and disorders greatly detrimental to trade. Such competition exists when the railroad companies or those who are permitted to solicit business, and to make contracts on their behalf, set out with the determination to withdraw freights from their rivals and secure them for themselves at all hazards and regardless of gain or loss ; and when acting upon this determination they throw to the winds all settled rates, and in the desperate strife for business offer any inducement in their power which will secure it. The country not long since had experience of such a season, and everywhere we listened to complaints of the injury which legitimate business suffered from it."

Again :

" Under such circumstances persons were favored and localities were favored, when the object to be immediately accomplished seemed to require it regardless of the just maxims of legitimate business, and of the rules of the common law, which enjoin upon common carriers that they shall deal with all customers upon principles of equity and relative fairness. Legitimate business, it was said, necessarily passes into an unsettled and speculative state while this condition of things exists ; safe and close calculations are impossible ; transportation becomes cheap, but neither producer nor consumer is certain to reap the profit, for the middleman cannot calculate upon the steadiness of low rates, and as he takes the risk of their being raised upon him, so he is in the best position to appropriate the benefit while they continue. Meanwhile railroad profits disappear, and dividends cease to be paid to the great

“distress of thousands who rely upon them for their living ; and every interest in any degree dependent on railroad prosperity must participate in the depression and disaster which accompanies the ownership of railroad shares.”

“The mere statement of these results is sufficient to show that this is not what in other business is known and designated as competition. Competition is the life of trade, but this is its destruction ; competition brings health and vigor, and secures equality and fairness, but this paralyzes strength and makes contracts a matter of secrecy and double dealing.”

Let me quote also from the argument of Charles Francis Adams, Esq., before the Committee on Commerce of the United States House of Representatives, in which he says :

“What then is this mysterious underlying cause of which the railroad abuses I have referred to as so notorious are the outward manifestations ? With all possible confidence I assert that it is excessive and unregulated railroad competition. This, and nothing else. \* \* \* Competition is a great thing, but it works in rough ways. In other words, every abuse in the railroad system, so far as the inter-State commerce of this country is concerned, can be shown to be the direct, the logical, the inevitable outcome of unregulated and desperate competition, and a mere outward skin symptom of it.”

### FORM OF RELIEF.

If there *can* be competition such as to constitute a special case within the meaning of the proviso, then the question arises whether the measure of relief cannot be prescribed by the Commission from time to time as the competition goes on and as it develops, in such form that all competitors shall see that they have really to deal with the Commission ; to the end that if possible, the Commission may prove to be in the exercise of its proper jurisdiction, really and emphatically

a regulator of competition, and to a large degree a controller of rates. The facts as to how competition has been conducted in the past are so much a matter of general knowledge that the Commission will undoubtedly take notice of them. The effect of the competition among these Transcontinental lines upon the business of the Clipper ships is too palpable to need anything more than a reference to it. The same that they have suffered in the past they cannot but anticipate as likely to occur in the future, if the application of these petitioners shall be granted. As individuals of the general public, for whose benefit the law was passed, it is entirely proper that they should urge upon the Commission the subjecting of this competition to the control of the law, and thus prevent the evils which the law is calculated to correct.

#### WHY THE URGENCY FOR SO SPEEDY ACTION BY THE COMMISSION.

If these petitioners could bear for a year and more the loss of carrying through goods at the ruinous rates which obtained during the war of rates carried on through 1886 and up to the time this act took effect, why cannot they endure the application of this section so long at least as may be necessary to give it an adequate trial?

There is certainly no propriety in such undue urgency towards the commission.

#### RATES SINCE THE SUSPENSION OF FOURTH SECTION.

These rates and the system of common points adopted show that ruinous competition is set on foot again. Is it to punish and silence those interested in clipper ships?

## POINTS.

**First.** I submit that the petitioners do not make out *special cases* such as are contemplated by the proviso to the act. What they urge is *general competition far and wide*, and they seek to gain general relief. They do not even specify classes of goods or rates. They do not ask the Commission to say *how much* less they may charge on *particular goods* for the long distances, but they ask to be relieved from the operation of the section altogether at a large number of points indicated by them. The ground, on which they ask this general sweeping action on the part of the Commission as a permanency, is what they allege to be their own interest. They do not deny that it will lead to discrimination; indeed they cannot do that, but they say that their interest is such that it ought to be regarded as sufficient to warrant discrimination.

**Second.** I insist that competition does not constitute a special case within the meaning of the proviso, and upon this I refer to the recent book of J. C. Harper, Esq., entitled, "Law of Inter-State Commerce," at page 55, and the cases there cited.

**Third.** If competition could be such in any instance as to constitute a special case within the meaning of the proviso, I insist that no such competition is shown here.

The petitioners presented themselves before the Commission as having the same grounds for relief as though they were carriers within the meaning of the act for the whole distance between New York and San Francisco. They are not such carriers in fact. They are carriers for part of that distance, and they are for-

warders for the balance of the distance. They have arrangements with connecting lines so that through freight is carried at through rates. (And here let it be noted that as to all connecting lines the statute provides for impartiality towards all as to rates, etc. (See section 3, part 2.)

Not one of these applicants is a carrier to or from New York, and not all of them are carriers to or from San Francisco. The competition which they say they wish to meet is not chiefly competition existing between points on their own roads. It is not, for instance, in the case of the Southern Pacific Company competition between New Orleans, the eastern terminus and San Francisco. The competition which the petitioners urge is mainly at points beyond and outside of their lines; it is, in fact, a *world-wide competition*. It includes competition at any or all points to which they may secure a connection. The Southern Pacific Company is a carrier from New Orleans to San Francisco. The Southern Development Company (a company not under the jurisdiction of this Commission) runs a line of steamers between New Orleans and New York. These two companies run their lines in connection and make through rates from New York to San Francisco. The Southern Development Company meets with competition from New York with the Clipper ships or from other railroads. Thereupon the Southern Pacific Company hastens to this Commission, and by reason of that competition at New York asks to be permitted to charge a less rate for carrying through goods from New Orleans to San Francisco than for the same kind of goods manufactured at and sent forward from points nearer to San Francisco. If a connecting line of steamers should run between New Orleans and some port in Europe or South America or in the Gulf or Atlantic States, then similar competition at such port would, of course, have the same bearing.

It would be too tedious to bring into review all the phases of competition which the applicants urge as a ground for the intervention of this Commission. The

above reference to the Southern Pacific Company must answer for a fair illustration.

The possibilities of competition are at once seen to be of almost limitless scope, and such is the competition which the Commission is asked to investigate in order to find a special case in which to authorize a carrier to charge less for a long than for a short haul. At such an investigation all the intermediate localities along the Pacific roads are to have 10 days' notice, printed in two newspapers published along the line, to attend in Washington.

The making of such competition a ground for suspending the 4th section is simply to involve the Commission in an extent of inquiry and investigation altogether beyond human capacity to perform with any thoroughness, and in fact to substantially nullify the section.

In the English cases referred to in Harper's Law of Inter-State Commerce, *supra*, it appears that the question was presented as to whether, if there was competition at a given point, transportation from that point was under "the *same* circumstances and conditions" as where it was from a point where there was no competition. The language of the English Act has the words "under the *same* circumstances and conditions," and the Queen's Bench Division, and the Court of Appeals, and afterward the House of Lords, held that the circumstances and conditions were the same notwithstanding the existence of competition at one point and not at the other.

Lord Chancellor CAIRNES, said: "That is exactly one of those things which Parliament has not left open to railroad companies to judge of—whether in that way they will equalize their capacity for competing with other lines or not" (Lond., etc., Ry. Co. vs. Evershed, L. R., 3 App. Cas., 1029, 1035; L. R., 3 Q. B. Div., 134 (Court of Appeal); L. R., 2 Q. B. Div., 254).

The same result was reached by the Exchequer Division (Budd vs. Lond., &c., Ry. Co., 36 L. T. (N. S.), 302). See also C. J. & C. A. R. Co. vs. The People, 67 Ills., 11, 18, 222. It is true that U. S. District Judge DEADY, in instructing a Receiver, arrived at a different

conclusion. In the case that was before him the points of competition were upon the line operated by the Receiver, as I understand it. I do not think, however, that the opinion of Judge DEADY can be regarded as having the better reason, or as one that the Commission should follow.

**Fourth.** The evidence placed before the Commission is not such as to warrant the conclusion that the petitioners would in the long run be benefited by the granting of their petition. This is a question that can only be determined by actual experience. It is more than likely that the advantage to the short haul localities would be such as to return to these petitioners greater profit than they would make if the section was suspended.

It is entirely clear that in many instances they have been carrying through traffic at a rate that did not pay them, and that they are under a temptation to do so where there is a free and unrestricted competition, and notwithstanding all that may be said about special reasons why such low rate does not result in loss, it nevertheless remains a matter of serious consideration whether it does not in fact prove a detriment to the railroad company.

The claim of advantage to them of having this section suspended is not so clearly made out as to warrant the conclusion that they are right in respect to it.

**Fifth.** Again it should be said that the cases presented are altogether too general to be regarded as special cases in any sense suitable for investigation.

**Sixth.** There is much to be said in regard to the existing rates at intermediate points ; there is no reason to believe but that, in consequence of the competition



existing before the law went into effect in respect to through rates and the losses consequent thereon, the intermediate rates had become unduly high in order to meet these losses, and that the fact, if such be the fact, that intermediate rates have not been advanced, and were not to be advanced under the operation of the act, is not a fact entitled to much consideration, for the reason that it may very well be that if the law is enforced and the losses on through rates are prevented that the intermediate rates will be brought to a lower figure as a consequence of such prevention.

**Seventh.** There are several important factors that can never be determined satisfactorily without the actual test of experience, and one of the most important perhaps, is *how far the rates at which the various competing parties can afford to carry goods*, will demonstrate in the long run that the lines that comply with the Inter-State Commerce Act can do as profitable a business under it as they would otherwise be able to get. That is a great and important question, and it will be a very great pity, as it seems to me, if that question is not brought to the test of actual trial, even if it should be at the expense of temporary losses.

The questions put by the Commissioners to Mr. Stubbs in regard to carriage over the Canadian Pacific and the rates at which that company can afford to carry any *considerable length of time* were very important in their bearing upon this question.

It is quite possibly true that the regrets reported to have been expressed by one of the U. S. Senators at the suspending of the long and short haul clause without first allowing its practical effects to be tested, were very well founded, and there may be some force in his idea that instead of suspending it for ninety days the Commission should have tried it for ninety days, although it is fair to say that the magnitude of the matter involved and the shortness of time which the Commission had

to determine what was wise and proper to be done under the law, seemed to afford a reasonable justification for the course pursued.

**Eighth.** But if the Commission should finally be of the opinion after all proper efforts on the part of the petitioners have been made that so great hardship was occurring as to make a special case for intervention, then I submit that the form of that intervention should be that of sanctioning specific reductions of rates, at points specified on the road of the carrier, and that this sanction of the Commission should be obtained *from time to time*, so that competing carriers would understand that in cutting rates they would be liable to lead to reductions at the hands of the Commission.

My idea is that the Commission would exert an influence to secure fair and just competition between all competitors by superintending and sanctioning changes of tariffs *from time to time*, and that under such a system all the outside parties would come into accord with the views of the Commission, and the competing parties into fair and satisfactory business relations towards each other.

**Ninth.** The skill and shrewdness of managers of railroads, as I have said, are well known. At present, and while these applications are pending, the petitioners would be thwarted in their plans for perfect freedom from the operation of the 4th section by securing any understanding with the Canadian Pacific, the Pacific Mail or the Clipper ships as to rates. They are under the temptation to make the situation in which the law places them appear as unfavorable as possible, but when it comes to be understood that they must adjust themselves to the law, we may reasonably suppose

that all these matters of competition will be found to work in such a way as that the benefits of the law will be secured.

**Tenth.** The object for which the law was passed should be constantly kept in view.

The consideration of competition is brought by these petitioners into the balance against the objects which the law was intended to promote.

On the one hand, it is supposed to be the future interest of the carrier that should be considered, and on the other, it is the interest of those who *have been* unjustly discriminated against that must be considered.

If the claims of competition are to have the effect contemplated by these applications, then the prohibition contained in the 4th section will become the exception and the suspension of the section will become the rule.

This is a result I cannot believe was ever contemplated, and one which I do not think the Commission will sanction.

**Lastly.** I cannot omit to say a word in conclusion on behalf of the American Merchant Marine.

It was an impressive allusion made by the Hon. Chauncey M. Depew, at the memorial services at Albany in honor of the late President Arthur when he mentioned how deeply Mr. Arthur always lamented the decay of our merchant marine. The Clipper ships that sail around Cape Horn are the best specimens that remain of what was once the pride of our people.

The competition which these lines of ships have met with on the part of the railroads has been all that was so vividly described in the report of the advisory committee which I quoted above.

The Commission are fully apprised of the character of the business of those lines. It has been shown before the commission that there is a class of that business which they alone can do at any fair profit.

They can meet the ordinary competition which exists at sea, and do a successful business, and it is only when these railroad companies enter into a deadly struggle to grasp business at all hazards and without regard to the cost of carrying that they become serious sufferers, and are thrown into imminent danger of ruin.

While I do not claim that the makers of this law had such considerations in immediate view in passing it, I maintain that the law was expected to promote the general weal and that many would be benefited by it who were not had specially in view when it was enacted. Such are my clients. And they simply ask that this Commission do not suspend the law in any such way as to put them in the way of suffering again from such wars of rates as have heretofore occurred from time to time between these great railroad corporations.

The very fact that these corporations have been so aided and subsidized by the Government of the United States is an additional reason why they should not be allowed to bear down unduly individual enterprise.

It is undoubtedly the tendency of corporations to become monopolists. They are powerful, and their managers are inclined to exert the power which they possess without very considerable regard for the rights of others.

I trust that the law which is now upon the statute book will be afforded a full and fair trial and that it will prove—what it was designed to be—a blessing to the country at large.

I am sure that the Commission can have no better guide in this matter than what is so well expressed in the following quotation from Dwarrris on Statutes :

“ It has been held to be the duty of the Judges, at all times, to make such construction as should suppress the mischief and advance the remedy—putting down all *subtle inventions and evasions for continu-*

*“ance of the mischief et pro privato commodo, and  
“adding force and life to the cure and remedy accord-  
“ing to the true intent of the makers of the act pro  
“bono publico.”*

Respectfully submitted,

ENOS N. TAFT,  
Counsel for Sutton & Co.,  
76 Wall St., N. Y. City.



## **Suggestions concerning Transcontinental Application for Suspension of the Fourth Section of the Inter-State Commerce Act.**

It is not my purpose to restate here the facts which require that, in respect of transcontinental traffic, the carrier should be permitted to make a lower rate for a longer than a shorter distance. The facts have been fully presented to the Commission, and are, I do not doubt, fully understood by it.

It is obvious that, with the competition of the clipper ships, the Pacific Mail Steamship Company and the Canadian Pacific Railway Company, it is necessary that the transcontinental railroad carriers of the United States should have a "free foot" in respect to fixing rates for through traffic to meet competition; or otherwise these competitors, who are themselves absolutely or practically beyond the control of the Commission, will fix rates just enough below the rates permitted to the transcontinental lines, to take away from them substantially the entire through traffic,—except only in respect of the single commodity of green fruits.

The rates heretofore fixed for intermediate traffic have been so low that the earnings from both local and through business for several years have been insufficient to pay any dividends at all upon the capital stock of the companies which I represent. The Central Pacific Railroad Company has not paid a dividend since February, 1884, and no dividend has ever been paid upon the capital stock of

the Southern Pacific Company or the Southern Pacific Railroad Companies.

It is, therefore, obvious that, having regard to the payment of fixed charges alone, it is impossible to make any substantial reduction from the intermediate local rates. If through rates should be maintained at figures not less than the requisite local rates, no substantial transcontinental through business (except that in green fruits) could be carried by the transcontinental lines of the United States. The truth of these statements has been fully shown before the Commission, and the facts in respect to the matter are quite as well understood by the Commission as by myself.

It will, I think, be conceded that the alternative is clearly presented, that either we must have a "free foot" for fixing competitive rates, or the transcontinental through business will be done by outside agencies.

Assuming this to be a correct statement of the facts, what is our position under the law ?

FIRST.—It must be observed that although very many petitions for relief in respect to the operation of the Fourth Section have been presented to the Commission, they cover but a small portion of the points at which the railway business of the country is transacted. As regards our own line, it may be stated that the points in respect of which temporary suspension has been granted are only 14 in number whereas the whole number of points at which railway business is transacted upon our line is upwards of 300 or 400.

The constant presentation to the Commission of applications for relief is no doubt well calculated to convey the impression that the points in respect of which suspension is asked preponderate. It may be, and very likely is, the



fact that suspensions are requested in respect of very much traffic and very many points in respect of which no occasion for suspension exists ; but the fact should not be overlooked or disregarded that the general rule embodied in the Fourth Section is and must remain in force, wholly unaffected by any action of the Commission, in respect of the vast preponderance of points of traffic ; and even though it might seem that the suspensions which were made or might be called for were numerous and extended, yet it should not be overlooked that the points in respect of which no such request would, or could reasonably, be made, or in respect of which the Commission would not seriously think of granting or permitting it, vastly preponderate.

SECOND.—Another, and it seems to me the most important, point, is not to be overlooked or disregarded ; that is, that the act in question, while providing for the establishment of a general rule in certain cases, clearly and distinctly provides that this Commission shall act as a governor or regulator in respect of its operation. Reference to the progress of the bill in Congress, and to the debates thereon, will clearly show that no such provision as the general provision of the Fourth Section of this act would or could have been adopted by Congress, except for the fact that the Commission was by the act itself invested with a regulating and controlling power to prevent injury, injustice and disaster.

It must undoubtedly be assumed that it was the purpose of Congress that what may be called the general rule of the Fourth Section should apply, except in those cases where, in the judgment of the Commission, reasons existed for suspending or dispensing with its operation. It must be recognized also that the subject was

one requiring special knowledge ; and it is clear from the act itself that Congress well understood that any tentative action which it might take on the subject ought to be coupled with qualifications, which, as far as possible, should obviate any danger of serious injury from the rule ; on this account, while it was concluded to undertake to establish a general rule in respect of the comparative rates of transportation to different points as respects each other, that legislation was coupled with conditions intended to operate and to be enforced as substantial safeguards against abuse or injury from the establishment of the rule ; in doing this Congress imposed upon the Commission the duty and responsibility of determination in respect to the exercise of the dispensing power, not undertaking to prescribe whether that power should be exercised in many or in few cases, but prescribing that it should be exercised in those cases where, after investigation, the Commission concluded that occasion existed for its intervention in this regard.

It may be said, in a general way, that outside of the Fourth Section, the rules and principles embodied in this act may be deemed to be the rules of the common law in respect to rates of charges for transportation ; these rules and principles as so stated are, however, to be enforced by special and peculiar penalties and remedies of a very stringent and effective character provided in the act.

The provisions of the Fourth Section, as I understand it, suggest the establishment of a rule not embodied in the rules of the common law. It is not my understanding that the common law prescribes anything in respect of the comparative or relative rates of charges for transportation to different points. The rate of course to each point must be reasonable ; there can be no unjust discrimination at the same

point ; but the common law has no rule, as I understand it, in respect to comparative or relative rates to different points ; the common law is complied with if reasonableness of rates and equality between parties exist in regard to each particular point. Under the common law, I know of no reason why, from mere willfulness or self-interest or arbitrary exercise of power if you will, a carrier may not in respect of any particular point prescribe a rate *less* than that which is reasonable in itself, notwithstanding in respect of another and perhaps adjacent point the rate is fixed at the highest reasonable point for the traffic. But it is obvious that in endeavoring to add to the principles of the common law in respect to adjustment of rates Congress has acted in what was intended to be a guarded and tentative manner, and has advisedly given to this Commission a power and responsibility of determining what the cases are in which the proposed new rule of relativity should not apply.

It is this power and this responsibility which we respectfully ask the Commission to exercise according to its own judgment upon the facts presented by these petitions. We ask that it will not refuse to exercise this power and responsibility on account of any clamor or outcry, or on account of any estimate of the absolute or even the relative number of cases in which applications are or may be made, or in which circumstances are or may be found to exist, where in its judgment suspensions should properly be granted ; but we ask that it should, as we believe it will, recognize the fact that what may be called the general rule of the Fourth Section would never have been adopted and could never have been adopted except for the regulating and controlling power coupled therewith and vested by the act in this Commission, and that we are en-

titled to have the fair exercise of the judgment of this Commission upon the question whether circumstances have been shown which justify the suspension of the operation of this general rule in respect to transcontinental business.

CHARLES H. TWEED,  
*Counsel for Southern Pacific Co.*





# INTER-STATE COMMERCE COMMISSION.

---

## IN THE MATTER OF THE PETITION OF THE MOBILE AND OHIO RAILROAD COMPANY

---

NEW YORK, May 7, 1887.

To the Hon. T. M. COOLEY,

Chairman of the Inter-State Commerce Commission:

The evidence taken by the Inter-State Commerce Commission at Atlanta and Mobile, so far as it is applicable to the case of the Mobile and Ohio Railroad Company, will, we believe, sustain the following propositions:

1. That a large proportion of the freight traffic of the Mobile and Ohio Railroad Company is competitive with water, or combined rail and water lines, which are not under the control of the Inter-State Commerce Law or the Commission.

2. That in granting the privilege to the Mobile and Ohio Railroad Company to meet such competition, the Commission will merely recognize and authorize the continuance of such discriminations as result from natural causes, which are beyond control and cannot be deemed either unjust or avoidable.

3. That the exercise by the Mobile and Ohio Railroad Company of the privilege of charging more to intermediate non-competitive points, will impose no burden upon the non-competitive business which is not just and reasonable and does not properly pertain thereto.

The first proposition is a matter of fact, which, we think, has been fully substantiated by the evidence.

The second proposition involves a question as to the dis-

cretionary power of the Commission, the discussion of which will be left to the General Solicitor of the Mobile and Ohio Railroad Company.

The third proposition involves certain principles of railway economy, to the proper understanding of which I may be able to contribute from the results of my own experience and study.

Navigable rivers furnish highways for commerce, of Nature's own providing, and when Nature has failed to make them broad enough or deep enough, the Government may enlarge them. This is often done at great cost, but they are always open to the carrier without restriction as to the rates to be charged, except that the law prohibits extortion.

When water courses cannot be made available in the direction of the traffic, artificial channels may be opened, such as canals, which are fed from existing streams, and afford all the facilities of a public highway at small cost to the carrier.

When nature has not furnished open highways and it is impracticable to enlarge the existing streams, or to supplement them by means of canals, railroads must furnish not only the highway but also the means of transporting goods over them, thus combining the service of the carrier with the care and maintenance of the highway. Whether the carrier service be coupled with the use of a highway which is free, or one upon which tolls are charged, the cost of transportation is always largely influenced by the volume of the traffic, and additional business can be done, at a profit, for less than the average cost of the whole service in which it is included, much less than the cost of the previous service to which it is an addition.

If there is sufficient local use of a canal or a turnpike to pay for its maintenance, additional business which pays no toll would be in itself a source, neither of profit nor expense, to the owner of such canal or turnpike; but it might nevertheless be a source of great profit to the merchants of a city or town, and as residents of such city or town, or in trading therewith, these same owners might be in-



directly benefited to such an extent as to fully compensate them for the remission of tolls on business carried over their canal or turnpike. The local carriers and their patrons might regard it as an unjust discrimination to collect tolls from them and let others have the use of the highway free, but if the result was to build up a local market for their products by developing the manufacturing or other interests of an adjacent city or town, the local shippers would derive an actual benefit from the apparent discrimination against them, and the carriers would undoubtedly get the benefit of the increased products to be transported to market, even if they did not participate in the transportation of through business to or from such city or town.

It may often happen that the remission of tolls on the raw material over a canal or turnpike through a sparsely-settled country to a point favorable for the manufacture of such raw material, or on the manufactured goods resulting therefrom, would be the means of developing local productions and of increasing local population along its line to such an extent as to greatly benefit the very persons who are seemingly discriminated against in the matter of tolls, and that, not only by furnishing a market for local products and furnishing occupation to local population, but also by reason of the increased facilities for transportation incident upon a larger business.

The local freights on railroads must necessarily be assessed with charges in the nature of tolls for the maintenance of the highway, and much of the competitive freight may and does also pay tolls, which contribute to the cost of maintaining the road, and to that extent relieves the burden on the local business ; but when there is competition with water lines the tolls *must be remitted* so as to place the steam-propelled cars more nearly on an equality with the steamboats, for the movement of the freight alone is vastly more expensive in cars, which are forced over grades and around curves on iron wheels, grinding against steel rails, than it is when propelled in smooth-bottomed boats through the gentle currents of a flowing river, or moved

on the bosom of the ocean by the winds of heaven and the auxiliary power of steam. It is all a railroad can do to carry goods at rates which water lines can well afford to charge their customers, and but for the ability of the railroads to command a little more than the water rates by reason of the insurance charges being against the water lines and the greater frequency and regularity of rail transportation being also in favor of the rail lines, there would be no profit whatever in the business and the water lines would have undisputed control of all traffic which can be done by vessels.

That railroads can increase their earnings by the addition of traffic at a rate far below the previous cost of transportation is a well understood fact, but the reasons therefor and the extent to which this may be carried is not generally known or appreciated, and hence the charge that local freights are made to pay the losses on through freight.

The local freight business of a road must be accommodated by regular trains which run at frequent intervals, stopping every few miles to receive and deliver freight, and for this purpose side-tracks, warehouses and other buildings must be maintained, a full equipment of engines and cars must be provided, the necessary arrangements for fuel and water for the engines must be supplied, and a full corps of officers, agents and employees kept on duty.

So long as the local business alone is to be accommodated the whole expense of maintaining and operating the road and the interest on the capital invested must be derived from such local traffic, but as it develops, the cost of receiving, transporting and delivering it, is diminished, for the cost is largely influenced by the volume of the business, so that when there is a large local freight traffic which requires many local trains the cost of this class of service approximates more nearly to that of through traffic, and then, but not until then, can a railroad company afford to make its rates even approximately the same for both local and through business.

When new business offers, it is not a question of whether

it can be done at the average cost which has been previously ascertained, but merely what will such business add to the expense already incurred, or necessary to be incurred, for the accommodation of existing traffic; so also when competitive business which has been done at however small a profit is abandoned, the profits of such business are lost and the remainder of the business must yield additional revenue in order to compensate for such a loss, unless the margin of profits is large enough to admit of such reduction. That there is no such margin in the earnings of the Mobile and Ohio Railroad is apparent.

Much of the business done at low rates by the Mobile and Ohio Railroad would, if abandoned by this Company, be diverted to other lines, but it consists in part of products and manufactures the sale of which would be restricted, and the production and manufacture checked, if they cannot be transported long distances at very low rates.

This brings us to the consideration of the question as to what are the lowest rates that can be made to yield a profit on the cost of transportation, to determine which we must analyze the service to see what the items of cost are and how much they are increased by additional business. On the Mobile and Ohio Railroad the expenses (exclusive of interest, which, if included, would add largely to the fixed expense) are classed as follows, and the relative proportion of each is as indicated, viz.:

Fixed expenses.....	39%
Terminal or station expenses.....	14%
Train expenses.....	23%
Car expenses.....	24%

Expenses which are called "*fixed*" are such as are not affected by the volume of the traffic either as to cost of receiving or delivering the goods or the cost of transporting them.

"*Terminal or station expenses*" are such as relate to the receiving and delivering of freight and are not affected in

whole or in part by the distance that the freight is transported.

“*Train expenses*” are those that depend on the number of trains and the distances they run, without reference to the number of cars in such trains.

“*Car expenses*” are such as depend upon the number of cars used and the number of miles they run without reference to the number of trains, or to the train mileage.

Additional traffic may be accommodated in any of the following ways, without additions to the cost of, or the expense of, maintaining of the highway.

FIRST.—In cars which are returning empty, or only partly loaded.

SECOND.—By adding cars to trains which must be run, although the intermediate business does not require as many cars as the engine can pull.

THIRD.—By running additional trains of cars.

FOURTH.—By adding to the facilities for receiving and delivering freight, as well as by running more cars or additional trains.

In the first case the additional cost would be very small, only what the additional weight would produce, such as additional fuel, and more wear and tear of rails and running gear.

In the second case only 24% of the expenses would be affected by the additional business, and it does not follow that they would be increased proportionately by the increase in the traffic.

In the third case 47% of the expenses would be affected, but this would not necessarily make the additional traffic cost as much as 47% of the cost of what was previously done, for the additional traffic would almost inevitably be moved without a proportionate increase of either the train mileage or car mileage.

In the fourth case 61% of the expenses would be more or less affected, but it is hardly supposable that the terminal expenses could be increased by additional traffic, except in a very much less proportion than the increase in the traffic itself.

Taking into consideration all of these several conditions it may be safely stated that if there should be added to the freight traffic of the Mobile and Ohio Railroad an additional amount equal in volume to what it now has, no part of such additional business would cost more than 50% of the present average cost per ton per mile, while much of it would be carried at from 20 to 25% of the present cost and all north bound business could probably be transported in cars now going empty in that direction at about 10 or 15% of the present average cost per ton per mile.

While there would be no injustice in making the local business of the road pay the *entire* cost of maintaining the highway, there would be no impropriety in assessing tolls as well as transportation charges on all through business that could bear such additional charge. But I wish to urge upon the Commission the utter impossibility of competition between railroads and water lines, if railroads are required to charge for the use of their roads in addition to a reasonable and proper charge for the transportation or carriage of the goods, while their competitors enjoy the free use of natural highways, the availability of which is often maintained at the expense of the national government. Not only is this the case where there is actual contact with water lines, but also where the effect of water competition is felt at junction points, as with the Mobile and Ohio Railroad at Meridian and Corinth, which are connected with important cities on the Mississippi River by short rail lines, either wholly, or almost entirely within one State; for in the case of the Memphis and Charleston Railroad, the rates between Memphis and Corinth would not control the rates of intermediate points, except perhaps one station near Corinth, which is in Mississippi, the others being, like Memphis, in the State of Tennessee and beyond the con-

trol of the Commission, as, for instance, from Chewalla, Tenn., to Memphis, 84 miles, the rate on a bale of cotton may be \$1.50, while the rate from Corinth to Memphis, 93 miles, may be only 75 cents per bale, an arrangement which would draw the cotton from local stations on the Mobile and Ohio Railroad through Corinth to Memphis, and in that case the Mobile and Ohio Railroad should, we think, be allowed to adjust its rates to Mobile, Meridian, Cairo and East St. Louis to meet this competition at or near Corinth without having as a consequence to reduce its rates from intermediate points, which would entail a heavy loss of revenue.

Very respectfully yours,

T. M. R. TALCOTT,  
*V. P. & G. M.*

---

BEFORE THE HONORABLE  
INTERSTATE COMMERCE COMMISSION.

---

IN RE

Petition of the Chicago,  
St. Paul, Minneapolis, and  
Omaha Railroad Company.

---

BRITTON & GRAY,

*Solicitors for Petitioner*

---





*To the Honorable*

*The Interstate Commerce Commission :*

The petition of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized under the laws of Wisconsin, would respectfully show unto your Honorable Commission :

The Chicago, St. Paul, Minneapolis & Omaha Railway Company operates, under lease, a line between Minneapolis and St. Paul, in the State of Minnesota ; and it owns and operates a line from St. Paul, Minnesota, through Superior, Wisconsin, to Duluth, Minnesota.

The distance from St. Paul to Duluth by this line is 176.6 miles, and its business between Minneapolis, St. Paul, and Duluth thus passes out of Minnesota into Wisconsin, and thence returns into Minnesota at Duluth.

The company also owns and operates a line from Superior Junction to Washburn, both in the State of Wisconsin. This line is used in connection with a portion of the line first above mentioned, and the distance from St. Paul to Washburn is 187.6 miles.

Duluth, Superior, and Washburn are all ports on Lake Superior. All of the through business, to and from eastern points, between aforesaid Lake ports and St. Paul and Minneapolis, is competitive with the St. Paul and Duluth Railroad Company. That company owns and operates a line of railroad from St. Paul and Minneapolis to Duluth, wholly within the State of Minnesota, and consequently not amenable to the interstate law. The distance from St. Paul to Duluth by this line is 154 miles.

Duluth rates maintain *via* the Lakes between Superior and Washburn and all eastern points.

It thus appears that whilst business from Minneapolis and St. Paul *via* the Lakes to all eastern points is competitive between said railroads to Duluth on the one part, and to Superior and to Washburn on the other part, yet that, as Duluth is the terminal point of shipment common to both railroads, Duluth rates necessarily control the rates at Superior and at Washburn.

So that to enable your petitioner to handle through business in competition with that going to or beyond Duluth *via* the St. Paul and Duluth R.R. Co., your petitioner has within the past four years expended for terminal facilities at Washburn, Wisconsin, more than \$500,000; at Duluth within the year last past more than \$300,000; and it is proposed to expend a large sum at Superior for the same purpose during the present season.

The tariffs of your petitioner, both through and local (hereinafter to be submitted), will show that its competitive rates for through business to Superior and Washburn are less in many instances than its local rates for shorter distances over the same line, the shorter being included within the longer distance. That result is inevitable, if competition on through business with Duluth rates is to be maintained. Otherwise the St. Paul and Duluth Railroad, not being within the operation of the interstate law, could make rates to Duluth which would be beyond the competitive power of your petitioner on its longer lines. No greater rates could be obtained than the value of the transportation to the shipper, and that would be measured by the Duluth rate.

The local rates of this company are believed to be just and reasonable. It has from time to time made material reductions in such rates of transportation for both passengers and traffic, so that the rates now received per ton per mile, and per passenger per mile, are as low as will per-

mit of carriage at a profit. To fix Duluth rates as the maximum for its local rates would compel your petitioner to abandon its local traffic, or to carry it at a ruinous loss. On the other hand, an increase of its through rates to Superior or Washburn beyond the Duluth rates fixed by the St. Paul and Duluth Company would necessarily force it to abandon its competitive traffic.

Wherefore your petitioner prays to be relieved from the provisions of section four of the Interstate Commerce Act of February 4, 1887, and to be authorized to charge less for longer than for shorter distances for the transportation of property between Minneapolis and St. Paul, Minnesota, on the one part, and Superior and Washburn, Wisconsin, and Duluth, Minnesota, on the other part, or for such other relief as will enable your petitioner to transact business between aforesaid points upon a basis competitive with rates of the St. Paul and Duluth Railroad Company between the two first-named companies and Duluth.

BRITTON & GRAY,  
*Solicitors for Petitioner.*

E. W. WINTER,  
*General Manager Chicago, St. Paul,  
Minneapolis & Omaha Railway Company.*

COUNTY OF RAMSEY, }  
*State of Minnesota,* } ss.:

Personally appeared before me, a notary public, duly commissioned and qualified in and for the county and State aforesaid, E. W. Winter, with whom I am personally acquainted, and whom I know to be the general manager of the Chicago, St. Paul, Minneapolis & Omaha Railway Co., the above-named petitioner, and who made oath in due form of law that the facts stated in the foregoing peti-

tion as of petitioner's own knowledge, are true, and that those stated upon information and belief he believes to be true.

Sworn to and subscribed before me this 16th day of April, A. D. 1887.

[SEAL.]

GEO. A. HAMILTON,  
*Notary Public.*

# B R I E F

---

Herewith are filed the existing local tariffs of the St. Paul and Duluth R.R., between St. Paul and Duluth, taking effect April 15, 1887 (Exhibit C), and the Chicago, St. Paul, Minneapolis & Omaha R.R. between St. Paul and Duluth, Superior and Washburn, taking effect April 5, 1887.- (Exhibit A).

The coincidence of through rates between these roads, and for such competitive points, is shown by the following table, compiled from these tariffs for convenient understanding :

	MERCHANDISE.					SPECIAL CAR-LOAD CLASSES.					CAR-LOAD CLASSES.					Tariff in effect April 15, 1877.	
1	2	3	4	5	A	B	C	D	E	Wheat, barley, corn, &c.	Salt, Cement, lime, &c.	Lumber.	Telegraph poles.	Horses and Mules.	Cattle and Swine.		
<i>St. Paul &amp; Duluth Railroad:</i> Rates between St. Paul, Minneap- olis, E. Minne- apolis, or Still- water, and Duluth.	45	35	25	20	10	14	12½	10½	9	8	10	8½	7	9	\$33 00	15	Tariff in effect April 15, 1877.
			per 100.				per 100.					per 100.			per car.		
<i>Chicago, St. Paul, Minn. &amp; Omaha Railroad:</i> Rates between St. Paul, Minneap- olis, or Minne- sota Transfer, and Duluth, Washburn, and Superior City.	45	35	25	20	15	14	12½	10½	10	8	10	8½	.....	{	*33 00 †34 00	*15 †15½	Tariff in effect April 5, 1887.

\* Washburn. † Superior City and Duluth.

Examination of the Omaha Company's existing tariff (Ex. A) will disclose :

1st. That the rates between St. Paul and non-competitive intermediate stations on the company's line are made to conform to the rates prescribed for through transportation between St. Paul and the company's lake terminals at Duluth, Superior, and Washburn, and in no case *exceed* the rates thus prescribed to such lake points.

Thus the rates from Minneapolis or St. Paul to Turtle Lake station—75 miles distant from Minneapolis and intermediate points—are *less* than the rates to the lake, and from this point onward nowhere exceed such local lake rates.

The slight increase in rates to stations beyond Turtle Lake, and named as South Chippewa Falls, Chippewa Falls, Eagle Point, O'Neil Creek, Bloomer, Cartwright, Chetek, Cameron, Hart's Siding, Rice Lake, Bear Creek, and Bashaw, is explained by the fact that these are points *not* on the line between St. Paul and the lake, but off therefrom, on the road between Eau Claire and Chicago Junction, as appears by the diagram attached to the original petition.

Comparison of such existing tariff (Ex. A) with the former tariff of February 18, 1884 (Exhibit D herewith), will show the large deductions made in local rates to such intermediate non-competitive points.

Whilst space will not permit a tabulated statement showing deductions to all such points, the following is submitted as fairly illustrative thereof :

			MERCHANDISE.					SPECIAL CAR-LOAD RATES.			
			1	2	3	4	5	A	B	C	D
Distance from Minneapolis:	110-m.....	Spooners.....									
			59	49	41	33	25	17	13½	12½	12
			45	35	25	20	15	14	12½	10½	10
153 m.....	Cable .....	Ashland Junction..	68	58	47	40	30	22	18	16	15
			45	35	25	20	15	14	12½	10½	10
			70	60	50	40	30	22	19	17	16½
190 m.....			45	35	25	20	15	14	12½	10½	10



3d. Whilst a comparison between the rates shown in existing tariff (Exhibit A) between St. Paul and the Lake ports with the rates shown in tariff of Aug. 23, 1886 (Exhibit E herewith), will show a slight advance in the rates to the Lake ports, such advance was necessary to prevent a further reduction in local rates to intermediate stations which the company could not grant and continue local business with profit.

This company has therefore conformed to both the spirit and letter of the Interstate Commerce Law, and, as by that Act intended, local shippers are receiving the full benefit of the largely reduced rates now established by it.

But the present opening of lake transportation will start the shipment of grain and other products to the Atlantic seaboard thereover. Through shipment partly by rail and partly by water must meet competing rates *via* other lines, and the Chicago, St. Paul, Minneapolis, & Omaha Company must conform to such competing rate or retire from the business. The company cannot do this, inasmuch as fully ninety per cent. of its carriage between St. Paul and the lake ports is of merchandise coming from or going to eastern points, and but ten per cent. of its business of a local character. Whilst rates for such through shipments for the present season have not yet been fixed, an approximate estimate thereof may be made upon the business of 1886.

The rates that were in effect between St. Paul and Washburn on through business interchanged with Lake lines during the season of 1886 were as follows :

			1ST.	2D.	3D.	4TH.	5TH CLASSES.
April 7th	}	- - -	15	12	8	7	6c. per cwt.
to May 1st,	}						
May 1st	}	- - -	20	15	10	8	6
to July 10th,	}						"
July 10th	}		12	10	8	6	5
to close of navigation,	}						"

The through rates in effect from St. Paul or Minneapolis to eastern points on wheat and its products during the season of 1886 were as follows :

MAY 26TH TO JULY 20TH.

	PER CWT.		PER CWT.
To New York.....	27½c.	To Boston, export. .	27½c.
“ Philadelphia.....	25½c.	“ Boston, local. . .	32½c.
“ Baltimore.....	24½c.	“ Albany.....	27½c.

of which this line received as its proportion of through rate above named 5c. per cwt. from St. Paul or Minneapolis to Washburn.

JULY 20TH TO AUG. 1ST.

The rates were changed and made as follows :

	PER CWT.		PER CWT.
To New York.....	25c.	To Boston, export. . .	25c.
“ Philadelphia. ....	23c.	“ Boston, local . . . .	30c.
“ Baltimore . . . . .	22c.	“ Albany . . . . .	25c.

of which through rates this Company received as its proportion from St. Paul or Minneapolis to Washburn 2½c. per cwt.

AUGUST 1ST TO CLOSE OF NAVIGATION.

These rates were again changed and made as follows :

	PER CWT.		PER CWT.
To New York.....	27½c.	To Boston, export . .	27½c.
“ Philadelphia . . . .	25½c.	“ Boston, local. . . .	32½c.
“ Albany . . . . .	27½c.	“ Baltimore.....	24½c.

of which through rates this line received as its proportion from St. Paul or Minneapolis to Washburn 5c. per cwt.

The following amount of business was interchanged with

Lake lines at the port of Washburn during the navigating season of 1886 :

Flour, - - - -	496,077 barrels,
Mill-stuffs, - - -	3,567,390 pounds,
Merchandise, - -	14,729,831 pounds,

besides a large volume of miscellaneous freight not specified.

The average rate on the merchandise business was one and twenty-six hundredths cents per ton per mile (\$.0126).

The average rate on wheat and its products was fifty-three hundredths cents per ton per mile (\$.0053).

It thus appears that this company received from one-fourth to one-half of the rate now established between St. Paul and the Lake ports on such through business, and it cannot expect higher rates will prevail during the coming season.

If, then, it is denied the privilege asked, of competing with the St. Paul and Duluth Company, *because* its share of such through transportation is *less* than its local rates between the same points, it must either perform local business at a loss, or retire from such through business, leaving its competitor, who is not amenable to the Federal law, in sole possession of the field.

But we confidently submit the facts thus presented establish that its transportation of "like kind of property" to, or destined for, points beyond the Lake ports, is not performed "under substantially similar circumstances and conditions" with the carriage between intermediate stations on its own line. The dissimilar circumstances which create this obvious difference are :

1st. Competition with a rival line not made subject to the interstate law, and which rival line may alter or change its rates between St. Paul and the Lake without reference thereto, and wholly within its own pleasure.

2d. Extension of such competition to the Atlantic seaboard without the control of the interstate law in the mode set forth by the following clipping from the *New York World* of April 15, 1887 :

“ DODGING THE INTERSTATE LAW.

“ [SPECIAL TO THE WORLD.]

“ ST. PAUL, MINN., April 14.—General Freight Agent Dodge, of the St. Paul and Duluth, has gone East to make arrangements whereby freight can be taken from New York city by the New York Central, a road wholly within the State, to Buffalo, there to be reshipped to Duluth by steamboat lines, which are not under control of the new Interstate Commerce law. At Duluth the freight can be reshipped by the St. Paul and Duluth over a route wholly within this State. In this manner it is thought a rate can be established which is much cheaper than all-rail rates *via* Chicago.”

Wherefore your petitioner asks that such order be made as prayed, viz., that this company, in the language of the statute, “ be authorized to charge less for longer than for shorter distances for the transportation of passengers or property ” between Minneapolis and St. Paul, Minnesota, on the one part, and Superior and Washburn, Wisconsin, and Duluth, Minnesota, on the other part, until the further order of this Honorable Commission.

Respectfully submitted.

BRITTON & GRAY,

*Attys. for Chicago, St. Paul,*

*Minneapolis & Omaha R.R. Co.*

WASHINGTON, D. C.,

*April 20, 1887.*

# ARGUMENT

OF

GEN. E. P. ALEXANDER

ON BEHALF OF THE

Central R.R. Co. of Ga.

BEFORE THE

INTERSTATE COMMERCE COMMISSION,

ATLANTA, GA., APRIL 28, 1887.

JOHNS & EASTON,  
OFFICIAL STENOGRAPHERS,  
Washington, D. C.



BEFORE THE  
Interstate Commerce Commission.

---

**Argument of Gen. E. P. Alexander.**

---

ATLANTA, GA., *April* 28, 1887.

MR. CHAIRMAN AND GENTLEMEN :

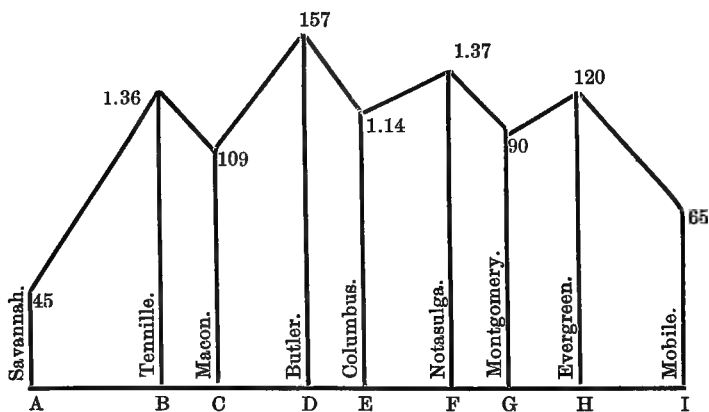
Making a speech is not one of my accomplishments, probably because I was not brought up as a farmer, as was the gentleman who last spoke (D. P. Hill). That part of my education was entirely neglected, and I can only attempt a plain talk on a few matters of business that I understand.

The "*construction*" of the law that is before us I do not propose to touch upon at all. I think the law was passed, as the gentleman who spoke last before me said, at the demand of the people of the country, who have an idea that, in some remarkable way, everybody everywhere was being discriminated against. That being the situation, Mr. Reagan imbibed the theory that a less charge on a longer haul was an outrage, and preached a crusade against it until the result was the passage of this law.

The gist of the law, I think, is contained in two provisions—one for the prevention of pooling between the railroads, and the other preventing the charging of a greater rate for a short than for a long haul. Only the last of these two provisions is before your honorable body for consideration and approval or disapproval. The first, het subject of pooling, is, unfortunately for the country, not

before you. It is not in your power to consider it. I believe, if it were in your power to look into the subject, the former practice of the railroads in that respect would be approved, and the Commission itself would become, in effect, the pooling commission of the railroads of the United States for the purpose of enforcing contracts for division of business and maintenance of uniform rates. But the only question before us now is whether railroads shall be allowed to continue the present universal custom of accepting less rates for long hauls upon competitive traffic than they charge non-competitive or less competitive traffic over shorter hauls. Let me first make the present custom clear by a practical illustration of a line of rates now in operation.

DIAGRAM A.



I have drawn a diagram which illustrates the method in which through rates from New York are at present adjusted along the line extending from Savannah to Mobile. The horizontal line A I will represent the railroad, and at various points along it representing a succession of



competitive and local points, I have erected perpendiculars proportioned to the amount charged for first-class freight from New York to the point represented. The rate from New York to Savannah by ocean is taken at 45 cents. Going west, to that rate is added the rate to different local stations from Savannah, as fixed by the Georgia Railroad Commission. At Tennille (135 miles from Savannah) it will be seen they reach \$1.36, but the through rate from New York to Macon (192 miles from Savannah), fixed by competition with other lines reaching that place, is only \$1.09. Hence, goods can go from New York to Macon and come back eastward and reach stations between Macon and Tennille at less to these stations than the rate to Tennille. Going west from Macon again the rates rise at the local stations until they reach \$1.57 at Butler (240 miles from Savannah). From thence they fall as we go west on account of the competitive rate of \$1.14 which prevails at Columbus (292 miles from Savannah). From Columbus they rise again gradually to \$1.37 at Notasulga (340 miles), where the influence of the through rate of 90 cents which prevails at Montgomery affects them. From Montgomery (386 miles) they rise to \$1.20 at Evergreen (550 miles), and then fall going west to 65 cents at Mobile (650 miles). The rate from New York to Mobile is fixed by direct ocean transportation, and cannot be advanced—in fact it is not maintained at 65 cents, but in competition sometimes goes as low as 20 cents.

The lines joining the tops of the perpendiculars which represent the rates at the various points mentioned, make a zigzag line with high points at the local stations most distant from points of competition, and low points at the latter places.

Now, a line of rates which will comply with the requirements of the fourth section, or which will not be less upon

any longer haul, cannot have any such succession of high and low points. When the rate has once reached a certain height as we go west from Savannah toward Mobile, it cannot after that descend. It must either continue to rise or keep on a horizontal. If, therefore, the road expects to compete at Mobile for freights from New York it must cut off all rates east of Mobile by a horizontal through the Mobile rate, which is 65 cents. A glance at the diagram indicates what an enormous reduction of all intermediate rates this would effect, many of them being reduced more than fifty per cent., even when the Mobile rate is maintained at 65 cents, its highest point. Should competition there force it down to 40, 30, or 20 cents, as may happen, all intermediate rates also would have to submit to the same reduction. Evidently, therefore, the railroad cannot enter into competition at Mobile, or even seek to do any business to Mobile at regular rates, if the restriction is put upon its line of rates, that a lower charge shall never be accepted for a longer haul. The water line would be always free to reduce rates, while rail lines would sacrifice all interior business with every reduction. The diagram makes it absolutely clear that a rail line cannot compete at a water point under this restriction.

Next, let us go back to the state of competition at Montgomery, the first competitive point east of Mobile. The competition of the water lines does not cease at the waters' edge, but reacts by river and rail into the interior. At present the best rate which can be maintained at Montgomery upon first-class goods is 90 cents. If the restrictions of the fourth section are put upon competition at Montgomery, all rates east of that point must be reduced to the 90 cent level. The diagram shows how severe the penalty would be. Similarly at Columbus and Macon the effects of any such restriction will be seen to cause

large reductions in the local rates. These local rates we can confidently claim are not exorbitant; they are fixed by the Georgia Railroad Commission, and there has been neither public or private complaint of them to my knowledge. Another proof that they are not exorbitant lies in the fact that our railroads do not return to their stockholders large profits upon their investment. Since its organization, the company I represent has averaged about six per cent., and it is an exception in returning that much to any other railroad in the South. I do not think there is another road in the South whose record is equal to it. Three or four large systems comprise most of the railroads: the Richmond and Danville, the East Tennessee, Virginia and Georgia, the Louisville and Nashville, and the Cincinnati Southern. None of these roads have been steady dividend prayers; many of them have never paid any dividends at all, and many have passed through the hands of receivers, owing to their not being able to meet fixed charges and expenses.

The Central Railroad, which I represent, is exceptionally well situated, in that it is the short line to most of the territory that it serves; that its stocks and bonds aggregate only about \$20,000 per mile; that it has exceptionally good terminal facilities at all points, acquired many years ago when land was cheap, and that being one of the oldest roads in the South population and business has grown up along its lines, under the stimulus which railroad transportation affords, for over forty years. It cannot be claimed that our stock is watered, that our profits are larger than such an investment is reasonably entitled to receive, or that our rates are oppressive. Nor do I think the same can be asserted of the railroads generally in the South. The effect of the restriction of the fourth section is plain from a glance at the diagram exhibited above.

There are few subjects, however complicated, which cannot on a thorough understanding be reduced to a single principle or fact expressible in a very few words. The whole moral law of the Old Testament was expressed in the Golden Rule, "Love thy Neighbor." Similarly, I think the whole tendency and effect of the fourth section can be condensed in the single phrase, "A Penalty on Competition."

Is that what the people demand? Is it not a complete reversal of the system under which the country has grown and business developed and the valuations of property been adjusted?

The diagram that I have drawn indicates, too, that the severity of the penalty is such that it must seriously and powerfully restrict competition. It will be competition in irons. Competition with a ball and chain attached, and competition grossly unfair to the railroad interests, in that the water routes are to be left entirely unrestricted. Ocean lines, and lines running only upon rivers, are not subject to the provisions of the bill, and are not under the jurisdiction of this Commission. They are left free to reduce rates and to raise them at their pleasure; to give rebates; to make pools, and to carry out their own devices as they see fit. As every fact must illustrate the truth, so I think every argument against our petition which has been, or which will be, presented to your honorable body in its tour through the South will only illustrate the truth of what I have said.

There are four classes who will oppose its being granted, and samples of them all have already been before you.

First are the steamboat men from the Mississippi river. This interest and the ocean steamship interest of course will oppose the granting of the petition, because it would be greatly to their profit to have railroad competition with them thus thrown into irons and hampered with a ball and chain.

Next will appear representatives of what I venture to call a narrow-minded class, sometimes found in cities along the sea-shore. They have the benefit of competition by water lines which the law does not touch. It seems to them that a restriction upon the system of railroad competition would give their cities large comparative advantages over cities located in the interior. Comparative advantages are positive advantages, and they think that the growth of interior places being checked, the future development of this country would be forced to take place principally at its seaports. Hence they wish to see interior competition throttled. They do not express their wishes in those words, but advance to you only such general arguments as this: That Congress must be supposed to know best what the interest of the country demands; that Congress in its wisdom has passed this law, and that it is a reflection upon that wisdom for the Commissioners to suspend its operation. They entirely ignore the point that Congress in its wisdom hesitated as to its results, and confided to your honorable body the duty to investigate and the discretion which I ask you to exercise.

The third class of objectors to our petition will be from local points in the interior, which do not possess the advantages of competition, and, not having it themselves, want it taken from those who have. The committee from Opelika represented this class of objectors. Opelika is an interior and non-competitive point; it lies at the intersection of two railroads, which have both been through bankruptcy. It can present no argument why it should have competitive rates which will not apply to Salem, Cusseta, or any other local point upon any other railroad. I will touch, further on, upon the results which would follow if all such petitions were granted and all interior points put on an equality or on rates proportioned to distance which

would be the result. The last class of objectors to our petition was well illustrated by the gentleman who addressed you last before dinner. His address was not an argument, nor was it based upon any facts.

It was the stale old story that railroads are immense corporations which oppress the public, and which, having had the right of eminent domain exercised in order to secure their rights of way, should now be required to serve the public at whatever rates the public choose to pay.

Gentlemen who use such arguments cannot be argued with; their minds are possessed with one idea, which excludes all others, and it is useless to enter upon any process of reasoning with them.

An excellent story was told by Dr. Depew, of New York, as illustrating the state of mind on this subject, of Mr. Reagan, the father of the feature of the law under discussion, and I will repeat it as equally appropriate to the gentleman who preceded me. A visitor to a lunatic asylum saw there a lunatic sitting astride of a chair, cracking a whip and crying, Go on! Go on! To please the lunatic, the visitor remarked, "That is a very fine horse you are riding." The lunatic stopped for a moment, and looking up at him said, "This is not a horse, it's a hobby," and again he cracked his whip and cried "Go on!" Stopping again, he said, "Don't you know the difference between a horse and a hobby?" "No," said the visitor, "what is it?" Why, said the lunatic, "you can get off of a horse."

I only regret that the other matter upon which Mr. Reagan had a hobby, and which he also incorporated into the bill, viz., the provision of pooling, is not also before your body for investigation and report. I should expect to see the transportation millennium approaching should your honorable body be appointed Commissioners for life to regulate contracts between railroads for the maintenance of equal rates, based upon fair divisions of business.

We in the South were probably the first in the United States to adopt that method of abolishing rebates and maintaining uniform rates, and we had carried it to such success as to greatly allay, if not entirely remove, the apprehension with which the public first regarded it. They had grown to recognize that pooling contracts not only did not give rise to too exorbitant rates, but that, under them, rates were gradually reduced while being maintained equal to all.

We can point with pride, I think, to the general satisfaction with the transportation service of the South, which is made apparent by the general support which our petitions before you are receiving. Considering the light character of our business and our sparse population as compared with the North, I think it is apparent that we are fostering with much success the growth of manufacturing, mining, and commercial enterprise throughout our territory. But there is one important fact concerning the transportation business of the South which has not heretofore been touched on before you, to which I wish to call your attention.

I have shown by the diagram exhibited above that any large reduction of our rates would reduce our revenues to the point of bankruptcy of the railroads; but it might be asked whether a large reduction would not turn a great volume of business from the West to our Southern sea-ports, and thus compensate us by the large increase in volume for the lower rates at which it would have to be worked. Some such idea is, indeed, prevalent in the South, and often finds expression in our newspapers, and has led to the throwing away of a great deal of money in the South in building unnecessary lines. It has been imagined that it would be an easy thing to make outlets of our Southern ports for the grain and hog products of the West on their

way to the North or to Europe, but both reason and experience contradict the idea.

The products of the South which we have to ship coastwise to the North, or on vessels across the Atlantic, are all heavy and bulky, such as cotton, rice, naval stores, lumber, and pig-iron. These products furnish our coastwise shipping, and the ships which go abroad full cargoes, but coming back they have very little freight to load inward, and to a great extent they must come back empty. The eastern products which they have to bring are principally such as dry goods, shoes, hats, &c., which come in comparatively small quantities, and are light in weight: hence our vessels coming southward come merely in ballast.

There are two results from this. First, their rates upon the outgoing products have to be nearly enough to pay for the round trip. Second, they want heavy freights for ballast coming South, and can afford to bring such freights at excessively low rates—almost for no rates at all.

Now the Northern and Eastern ports, New York, Philadelphia, and Baltimore, by means of the lakes and canals, have water transportation as far west as Duluth. Moreover, their rail lines serve very dense populations which supply traffic enough to support double and even quadruple tracks, and they can work at rates far below what it is possible to support the single track roads of the South upon, running through sparsely settled communities. Again, the money centres of the country have become established in the North and East, and the large movement of the crops must be made to and through these money centres. The result of all this is, that instead of our Southern ports being outlets for Western products, they are in fact inlets, through which these products carried first to New York by the lakes and the trunk lines, and then brought



coastwise by steamers and sailing vessels, which are glad to get them for ballast, actually come in at and supply a large part of the territory near the coast. From this fact, railroads built to Port Royal and Brunswick, under the idea that the deep water of those harbors could be utilized for the export trade, have been financial failures in every instance. Not a ton of western products has ever gone North from them, but instead these products come around by the route above indicated, and to a considerable extent actually deprive the railroads of western business for the ports themselves, and largely reduce the rates on what they are able to control at all. When it is remembered that these products are best handled in *car-load lots*, and that if brought to our southern ports for shipment North, would have to break bulk and go on ship-board and be handled off ship again at the northern cities, it is plain that we can never hope to turn this tide backward. Neither can we ever hope to build up an export business to foreign countries. That business must always be done through the commercial and financial centres such as New York, Philadelphia, Baltimore, and Boston.

Several years ago, being connected at the time with the Louisville and Nashville Railroad, the president of the Port Royal Railroad came to me for help in making an effort to start an export business from Port Royal. He had believed in its possibility, and built an elevator to handle grain. His elevator was finished and an English vessel with a cargo of steel rail was expected to unload at his wharf. He was anxious to get a return cargo of grain to Liverpool by this vessel, and came to me to ask a low rate on the grain for this purpose. I agreed to dead-head it for him all the way from the Ohio river, or from Chicago if necessary, to load his first vessel, but after keeping her on demurrage for some weeks in a vain effort to get a cargo even with this concession his vessel sailed away empty.

To return now for a moment to the state of affairs which would follow if it were possible to abolish the present custom of giving low rates to interior competing points, than to points which are local or non-competitive.

In the first place, it should be noted that the injustice which is apparently done to the local points is much more apparent than real. The concessions in rates which are given to the competing points do not stop within the city limits, but are carried outward in the trade of the town by wagon and by rail to every consumer or producer who buys or sells there. The town is but a distributing centre, which receives the concessions in rates and passes them on to those who trade there. Those who are near get the full amount ; those who are far off get the benefits in degree proportioned to their distances. The function of the distributing centre is to act as a middleman who collects and handles in large quantities the articles produced and consumed by a scattered agricultural population, in small quantities at a time, and the middleman simply passes on to producers and consumers the low rates which he enjoys.

Next, it must be observed that the present system of giving lower rates to competing points, and thus building up distributing centres, possesses incidental advantages which are of great importance to the country at large, and which it could not afford to dispense with.

First. It provides concentration of capital and business in large concerns, which can serve their customers more efficiently and cheaply than smaller ones.

Second. It enables the smaller consumers and producers and dealers to trade near home where their credit is better known, and where they can secure better terms than if they had to trade in distant centres in the North and East.

Third. The bringing of people together in cities and larger communities promotes both the growth and the variety of manufactures, thus furnishing employment not only for men, but for children and females, and rendering possible many industries which could not otherwise exist.

My time will not permit me to expand this line of thought, or to illustrate it further, but no more I am sure is necessary to make it apparent that any radical change in the methods of transportation now prevalent promises only great disturbance and no improvement. They are all natural outgrowths of the political system of the country and of its geographical features. In the language of Darwin, they are "developments" or "adaptations to environment," and the only complaints which have come before you are plainly, palpably, only those of the selfish or of the uninformed.

Commissioner WALKER. You have omitted one point which I would like you to explain. As a matter of fact, are you able to make long hauls at less than three-tenths of a cent a ton a mile?

Gen'l ALEXANDER. Yes; if it is *extra* business—business in addition to what I am now doing. My whole business at the end of the year will average, of course, more than that in cost, but being now organized for business, having equipment and rolling-stock, and a track not fully employed, I can take *extra* business at a very small expense, and would be willing to undertake it in any quantity. If return freights could be given at the same rates, I would be glad to undertake to move the mountains to the sea at that rate. An illustration, drawn from ordinary business, will make the principle clear. A merchant opens a hat store here in Atlanta, and lays in a large stock of hats. He finds that to pay his rent and clerk hire, and interest on his investment, he must charge, say, an average of 20 per

cent. profit on his retail sales. Suppose that a stranger passing through the city should enter his store and say, "I am a resident of New Orleans, and on my way home. If you will sell me a hat at three per cent. profit on its cost to you, I will buy it and throw away my old hat, but, if you cannot, I will wear the old one until I get home, then buy a new hat, and save this for rainy days." Would not the hat merchant make a mistake not to accept the offer and make the sale? He has the stock on hand, his store rented, and his clerks hired. The man is not one of his regular customers, and he is able to sell him only, as it were, by accident. If he were to reduce his profits on *all* his sales to that amount, he would go into bankruptcy, but he would be plainly losing money not to sell a hat at three per cent. profit to the traveller who could not afford to pay more.

That is the principle upon which a railroad can afford to take extra business. Its money is already invested, its officers employed, its track maintained, its equipment provided. There may be a theoretical injustice in the hat merchant selling to a stranger for less than he sells to his own customers, but it is only theoretical; for if many strangers will patronize him and increase what we might call his foreign trade, he can even afford to reduce his prices to his local trade. So when a railroad is free to take any business which will pay it a profit above the bare extra cost of handling that business, it should be free to do so, and its doing so tends to benefit even the local customers who seem to be discriminated against.

Finally, after all, the railroads, in petitioning your honorable body to relieve them from the restrictions which the fourth section otherwise puts upon us, is preferred more in the interest of the communities we serve than in our own. I have shown that these restrictions act as a pen-

alty upon competition. If you enforce these penalties it cuts off competition. This will leave each railroad to serve the territory to which it is the short line. It would give it the business which it was built to carry on, and prevent it competing in the territory of any other railroad.

This state of affairs I really believe would make more net money for each of the railroad systems of the South than the present system which allows them to compete in each other's territory. To apply it to the system which I represent (the Central Railroad), I can say confidently that I can willingly abandon competition at Mobile and New Orleans, and give up the business which I get to those points, if the long lines which compete for my nearer business are restricted in the competition. I do not care to take business into the territory of anybody else, if no other system is allowed to come into mine. But I foresee clearly that it is not to the interests of the country that so radical a change should be introduced. It could not stand if it were attempted. The few cranks and people representing selfish interests who now favor it would never be heard from in the general and universal protest which the enforcement of such restrictions upon competition would call forth. It would be as useless to attempt it as it would be to make the Mississippi river run up stream. The effort to do so would only produce temporary disturbance and calamity, and it would ignominiously fail in the end. Therefore, I ask your honorable body to exercise the discretion vested in you, and to permanently suspend the operation of the fourth section. It must come to that in the end, and the sooner and more thoroughly it is done the better it will be for all interests involved.



---

ARGUMENT OF

**LIONEL A. SHELDON,**

**Receiver of the Texas and Pacific Railway,**

**BEFORE THE**

**Inter-State Commerce Commission.**

---





*Mr. Chairman and Gentlemen of the Commission :*

The fourth section is the principle feature of the Interstate Commerce Law, that is causing perplexity to carriers by railway, and giving work and trouble to the honorable Commission.

Confusion is a necessary consequence of changes from one system to another, and as this section, in some respects, is a radical innovation or complete revolution as to the principles which have heretofore governed transportation, and is so sudden (as little time has been given for consideration and preparation) that all find themselves confronted by uncertainty and doubt.

The Interstate Commerce Law was passed to prevent certain supposed evils which, it is believed, have grown up under past methods. These evils are alleged to be as follows :

1. Unjust and unreasonable charges.
2. Unjust and unreasonable discriminations against individuals.
3. The withholding of proper facilities from shippers and other patrons of the railways.
4. Instability of rates.
5. Discriminations against localities.

The last paragraph of Section 1, is intended to be a corrective of the first alleged abuse, and is simply an enactment of the principle of the common law, which also has a cognate in the civil law. For centuries, in England and during the life of this nation, the courts have been open to redress grievances arising under this principle and whenever appealed to they have afforded adequate relief. The fifth section may have been intended to remove the inducement to this abuse by forbidding pooling of earnings. Section 2 and the first paragraph of Section 3, amply provide against discriminations as to individuals and are a repetition of common law principles which have been enforced by the courts whenever appealed to and to grant redress in such cases

may be said to have become a part of the settled jurisprudence of this country.

The last paragraph of Section 3 sufficiently covers the matter of supplying facilities, and to do this has long been recognized as an obligation of carriers, whether by rail, water or otherwise.

The sixth section, in its many paragraphs, is in part designed to prevent instability of rates, and it may have that effect to a certain extent, and it may have some bearing in avoiding also discriminations against individuals as a sudden and secret changing of rates has operated to render trade uncertain and unreliable, and has been the cause of much individual injury and sometimes disaster. That rates must be printed and published and cannot be advanced until ten days' notice has been given, nor reduced until new schedules have been printed and posted or changes noted on existing ones, may be some hindrance to sudden fluctuations, but it would have been far wiser and more efficacious if it had been required that rates should not be increased or lowered until thirty days' notice is given, for reduction is as unsettling and may be as effective in producing individual discrimination as an advancement in rates.

I make these general observations as preliminaries to saying that none of these evils are in the slightest degree affected by the provisions of the fourth section, except possibly discriminating against localities, and were that section stricken out of the law every other alleged abuse can be prevented under other sections and provisions. Even discriminations against places are practically by the last paragraph of Section 1 inhibited, and can be prevented by its enforcement. Hence the fourth section has very little practical value, even in preventing discriminations against localities. If the long and short haul clause were wholly suspended, or had never found a place in the statute, this abuse could be successfully prevented by enforcing the inhibition against unjust and unreasonable charges, for to redress this grievance the courts are always open, under the common law as well as the act of congress, and under it any person deeming himself aggrieved may appeal to the honorable Commission.

One feature of this law is peculiar and harsh, and with due respect to the Congress of the United States, I must say operates unjustly. The whole law is aimed at railroad transportation only. It is true that certain water lines are included when operated in connection with railroads in the manner designated in the act. Their offense is not that they are water lines, but because they are adjuncts of railway lines. Water lines, whether by sea, lake or river, are in many instances engaged in interstate commerce as much as railways. These and all other carriers, though subject to the common law, are exempt from the provisions of this act. This is an undisguised discrimination against one class and in favor of another—a feature of legislation without precedent in this country. It matters not that railway companies are chartered corporations and in their behalf the right of eminent domain is exercised by the government, as in all cases they are required to pay for all they get from private persons. All carriers pursue their occupation for private gain, but are made responsible to the public and heretofore have been equally regulated and controlled by law.

I am aware that the clamor has been especially against railroads because, probably, they do the bulk of internal transportation and are therefore most prominent. I assert that whatever abuses have been practiced in railway transportation, whether they are unjust and unreasonable charges, unjust discriminations against persons and places, instability and fluctuations in rates, withholding proper facilities, traffic agreements or pooling contracts, those engaged in transportation by other methods have been equally guilty, except in magnitude, and there is nothing that railroads can do that cannot be done by those who employ other carrying agencies.

One is puzzled to know what there is to justify this discrimination. It is contrary to our practices as a nation, and in marked violation of the principles of our institutions. There are some reasons why railroads should be singled out for favor instead of disfavor as against water lines. Seas, lakes and rivers cost nothing to man in construction and nothing for mainten-

ance, except to the public treasury, while railroads, as a rule, have been built with private capital. It is a rule that has existed for centuries in all civilized countries, and which none but socialists and communists combat that those who put their money into enterprises, business or property, are entitled to a reasonable return upon their investments. Besides it is a fact publicly known that, through the agency of railroads, the cost of transportation has been materially cheapened all over the country, and the efforts of the water lines against railroads are not incited entirely by considerations of public welfare, because, wherever railroads can be embarrassed or driven out of business competition is removed and rates may be increased.

These considerations are pertinent, as the exercise of the suspensive power under the fourth section, it is assumed should take place after considering all the surrounding circumstances and with reference to private and public interests. If the fourth section was designed to prevent discriminations against localities if rigidly enforced, it will effectually suppress competition in numerous instances.

Congress approached the enactment of the fourth section with doubt and misgiving, as is shown in the debates and the fact that the first clause was not made a cast iron rule, and that its non-enforcement to a certain extent was placed within power of the Commission. It is provided that suspension may be granted in special cases, but this power, after all, must be exercised upon some general and recognizable principle. After sufficient investigation, I have no doubt, all cases will be decided upon rules specifically declared or easily deduced from precedents that are made by your honorable body.

Some differences have already arisen as to when and under what circumstances the Commission may exercise this power. The inhibition against charging less for a longer than for a shorter haul over the same line and in the same direction, is only in cases when the "circumstances and conditions are substantially similar." When substantial similarity clearly appears, the commission is without authority to suspend. I conclude

that railway officials may undertake to decide for themselves and at their own risk, when the circumstances and conditions are not substantially similar, and if they are sustained by the Commission and the courts they are not answerable to the law, and that the province of the commission under this section is to determine when the circumstances and conditions are so far dissimilar as to justify suspension.

The difficult question is to determine when there is a substantial dissimilarity, and what facts shall constitute it. No rule would be justifiable that would entail upon railways a grievous loss or deny them legitimate opportunity to earn a reasonable income upon the money invested in them, nor to deprive any part of the public of the benefits of competition, for it is the life of commerce, the very spirit of progress and development, and the effectual antidote for monopoly.

What are just and reasonable charges depends upon many circumstances and conditions,—generally upon the necessary cost of construction, expense of operating and the volume of business. Railroads are built with reference to all the business they can command on the line and at the termini. They are established with reference to objective points, those that have traffic of value as an existing fact or have it in prospect. It would seem to be unjust to compel them to forego either the through or the local business in any case. If the first clause of the fourth section is rigidly enforced many railways will be compelled to abandon the through for the local business. This will in some cases leave terminal points without competition, and consequently without competitive rates and without any benefit to the intermediate people.

Charging less for a longer than for a shorter haul is not necessarily unjust discrimination, nor is it a conclusive presumption that the larger charge for the shorter distance is unjust and unreasonable. Volume of business has an important bearing. If the charge of a dollar per hundred pounds enables the railway to secure a daily train of ten loads from New Orleans or St. Louis to El Paso, and if it is reduced to seventy-five cents fif-

teen loads are secured, the railway makes more money in the latter case than in the former; and also in case it charges only sixty cents and thereby gets twenty loads, its profits are still greater, because the increase in cost of handling the latter trains is not in proportion to the increase of freight hauled. So also should the charges be less when the cars can have loads both ways than when they must go loaded one way and empty in returning. Competitive points usually furnish much more traffic than way stations, because as a rule they are important trade centres, from which commodities move in all directions, while local points are rarely able to furnish any considerable amount of return freight. It cost as much to switch one car as a whole train.

The principle that what appears to be, and in a certain sense is, discrimination, is not necessarily unjust discrimination, is not only recognized among carriers and in commercial circles, but has been repeatedly so declared by the courts in this country and in England. In his treatise on the Law of Railroads, by Mr. Wood, the author in speaking upon the rate for transportation of large quantities of freight, in contradistinction to that of a small quantity, says that to charge the same rate in both cases would be unreasonable equality and would be unreasonable discrimination against the large shipper. P. 570. A judge, in a case cited in a note on p. 568, uses this language: "The charging of another party too little is not charging you too much."

The real question is, whether it is unjust discrimination if a rate is fixed at one point that a lower one may be charged when the transportation is for a longer distance. Is it either right or proper to shut a railroad out of through business when it cannot afford to sacrifice just and reasonable rates on local business? An Oregon court has recently said in passing upon a similar question under State law: "If the legislature cannot require a railway corporation formed under the laws of the State to carry freight for nothing, or at any less rate than a reasonable one, then it necessarily follows that this provision of the act cannot be enforced so far as to prevent the railway from competing

with the water craft at Corvallis and other similarly situated points, even if in so doing they are compelled to charge less for a long haul than for a short one in the same direction. . It is not the fault or contrivance of the railway that compels this discrimination, but it is the necessary result of circumstances altogether beyond its control. It is not done wantonly, for the purpose of putting the one place up or the other down, but only to maintain its business against rival and competing lines of transportation. In other words, the matter, so far as the railway is concerned, resolves itself into a choice of evils. It must either compete with the boats during the season of water transportation, and carry freight below what the legislature has declared to be a reasonable rate, or abandon the field and let its road go to rust.

“Nor can the shipper at the non-competing point or over the short haul complain so long as his goods are carried at a reasonable rate. It is not the fault of the railway that the shipper who does business at a competing point has the advantage of him. It is a natural advantage which he must submit to, unless the legislature will undertake to equalize the matter by prohibiting the carriage of goods by water for a less rate than by rail. And when this is done the inequalities of distance, as well as place, may also be overcome by requiring goods to pay the same rate over a short haul as a long one, and then the shipper at Ashland will be as near the market as any one.”

Lansing on Railway Lines, p. 22, uses the following language: “The cost of no single shipment can be determined. It is carried on a freight train, which also carries many other shipments consigned to many places. The same train often carries emigrant passengers, and is run over a track which is also used by passenger trains. Besides these elements, there are large expenses incurred by the company, of which an indefinite amount is chargeable to the various classes of traffic, each by itself—as passengers, freight, express, or mails.

“The only course then left to the railroad is to take the freight at whatever rate the shipper can send it with profit to himself,

and hope the whole of its traffic will amount to a greater sum than the cost of the service. The railroad may thus for years continue carrying freight at rates which do not cover the cost of the service, while the shipper will immediately stop his freight as soon as its transportation ceases to be remunerative to him. The rates can in no case be more than the value of the service, but they may be less than its cost. Between these two limits, the former of which ultimately determines the point below which no rates will be held, and the latter of which immediately determines the point above which no freight will be sent, there is in practical operation a varying scale of rates determined by competition both of parallel lines and various commercial forces."

It may be possible for legislation to override all the laws of trade and attempt to create equality as to circumstances and conditions as to every locality in the country, but it will be both impracticable and unjust. A, through his foresight or good luck, settles at a point which is or turns out to be a competitive point, while B, through stupidity or bad luck, settles out in the country, where there is little business and no competition. Is it the mission of legislation to step in and make up for B's dullness or ill fortune? The greater part of the population of the country is remote from natural channels of transportation. Railroads have penetrated the interior by tunnelling mountains, filling valleys and bridging rivers. It is true that this has been done that an income may be derived from investment, but it is at the same time an accommodation to the interior people, and the cost of doing their business is comparatively greater because of the smallness of the volume. It is more expensive in many instances to build to them, and it is nearly as expensive to maintain the way as it is where the volume is greater. The fact that there is substantial competition is the most cogent reason for suspending the operation of the law, especially where competition is from water lines in consequence of the pecuniary investments in railroads and in the cost of operating—investments and expenditures which those who use nature's roadways are not called upon to make. It seems unjust to deprive railways of



traffic which they have a natural right to, or compel sacrifice of their interests as to other business.

As has been stated, a suspension of the fourth section wholly will not leave the public without redress for unjust and unreasonable charges, for under the Interstate Commerce Law an appeal can be made to this honorable Commission and to the courts, and the courts are open to their complaints under the common law, and they have not failed in the past to rectify the wrongs done by carriers. It may have some bearing to say that railroads are under legal obligations to run their trains over their entire lines, and they were built before the Interstate Commerce Law was passed, and if it is so construed and enforced as to drive some of them at least out of traffic at competitive points, the effect will be essentially retroactive. They cannot cease carrying on their business without danger of forfeiture of charters, and the alternative is presented of losing their charters or running at a loss. More money is invested in this country in railways and their equipment than in any other kind of property, except in other real estate. To prevent the earning of a reasonable income from these large properties, would not only be injustice to private persons but a calamity to the public.

The Texas and Pacific railway has presented two applications for suspension of the long and short haul provision, and both are based substantially upon the fact of competition. The difference in the two cases are that competition in one is by foreigners and in relation to foreign commerce, and the other is where there is competition with domestic carriers and for domestic trade.

In regard to the transportation into El Paso, and through that place into Mexico, the facts are partially stated in the application. Some others are pertinent to the question. I have been unable to lay my hands upon late statistics concerning the foreign commerce of Mexico. A few years ago I had occasion to examine the subject and found the statistics to be about as follows :

The total exports and imports amounted to fifty-five million

dollars, of which Great Britain controlled a little more than thirty-eight million; the United States, less than thirteen millions, and less than five millions of this was carried by our own people. The balance was distributed among other European nations. The foreign commerce of Mexico has, undoubtedly, increased since the date of the statistics I have given. The trade of Mexico is valuable to our people, as that country consumes considerable quantities of our surpluses, especially those of the Mississippi Valley and the Northwest, and gives us in payment such valuable commodities as hides, wool, chocolate, valuable wood and precious metals, particularly silver. By giving reduced rates on the part of the railroads in this country and the Mexican Central, which is the property almost wholly of citizens of this country, trade in the interior of Mexico with this country has been largely developed and the prospects are promising for a further growth, unless a rigid enforcement of the long and short haul provision of the Interstate Commerce Law becomes an obstacle.

This traffic over the Texas and Pacific in 1886 was more than double that of 1885. In 1886, the earnings of the Texas and Pacific were a little more than six million dollars, and its receipts at El Paso were about \$560,000, and more than one-half of it was derived from Mexican business. It should be stated that a portion of this earning belonged to connecting lines. The greater part of the merchandise destined to Mexico over the line of the Texas and Pacific is from St. Louis, Kansas City, New Orleans, Chicago, and several other cities in the Mississippi Valley and the Northwest, and some of it is from New York and other places on the Atlantic coast. If the rates at intermediate points should be reduced to those we are compelled to make to continue in the Mexican traffic, the losses to the revenue of the road would be severe and cannot be endured. The local business for three hundred miles east of El Paso is of no consequence, and were it not for the through business it would be a loss to run the road beyond Big Springs; in fact, without the through business, so far as earnings are concerned, the trains had better in such case be

taken off west of Colorado City, a distance of nearly four hundred miles east of El Paso.

Suspension is applied for as to transportation of freights to El Paso for local delivery, because the merchants there have a large trade with Mexico and are well situated to further increase it, and it would be a source of great expense and trouble to designate and trace that which is sold into that country, and that which is sold elsewhere and locally consumed is inconsequential as compared with the importance of giving the merchants the fullest scope in developing the Mexican trade. In consequence of making successful competitive rates, British trade has been pushed far southward from El Paso, and to some extent freights have been transported into the City of Mexico over the Mexican Central Railway. Mexico purchases in this country all kinds of commodities, and hence suspension, if granted, should include the whole traffic.

The other application relates to traffic between New Orleans and Missouri river points. The particular places are Kansas City, Atchison, Leavenworth, St. Joseph, Council Bluffs, Omaha and less important points in their vicinity. From New Orleans to St. Louis, the Mississippi river is navigable the whole year, and there are rail lines from St. Louis not more than three hundred miles long to Kansas City, which is a common point from which the other cities and places named are reached by water and rail. The water transportation above St. Louis is not seriously competitive for more than three or four months of the year, but competition by rail is continuous.

New Orleans is the natural entrepot for sugar, molasses, coffee salt and many other commodities, and from which the country west of the Mississippi river should be largely supplied. Louisiana produces quantities of rice, salt, sugar and molasses; New Orleans also purchases at said Missouri river places wheat, corn and hog products. The trade between it and them had grown into considerable proportions, and had become advantageous to all the parties thereto, but it can be participated in only by meeting competitive rates on the part of the Texas and Pacific

and its connecting lines. By looking on the map it will be seen that this line from New Orleans to Kansas City, is substantially as short as any other, and on investigation it will be discovered that it is as feasible as any other in the matter of the physical characteristics of the country through which it runs. From New Orleans to the Indian Territory the local business is large, while that through the Territory is comparatively small. It would be injurious, specially to the revenues of the Texas and Pacific to make local rates to correspond with the competitive ones at the places hereinbefore named. The freights through to Kansas City and beyond, are rarely less than carload lots and frequently they fill several cars and sometimes there are full train loads. The traffic is of such character and magnitude as to enable the lines to fill their cars on the return, while the local freights are less in quantity to any intermediate point, and frequently are sent out in piecemeal lots, but are much greater in the aggregate to and from all intermediate points than to and from Missouri river points.

Some of the rail lines from New Orleans, I am informed, entertaining a different view as to the construction of the fourth section from that entertained by the managers of the Texas and Pacific, have continued competitive rates at said Missouri river points without reducing their locals, and one other, not having so valuable an intermediate traffic has reduced the locals in order to maintain the competitive through rates. The result has been that the line I represent has been obliged to practically withdraw from the Missouri river traffic and the monopoly is enjoyed by its competitors. Thus we are deprived of a revenue to which we think we are justly entitled, but which we are unable to receive without submitting to a greater loss unless the fourth section of the act is suspended as to the traffic between New Orleans and these Missouri river points.

In the months of October, November and December last, the Texas and Pacific transported to Missouri river points, sugar, molasses, rice, coffee, earthenware, salt and tin plate, amounting in the aggregate to 6,886,282 pounds, or about two hundred and

thirty carloads of these commodities alone, not to mention other articles. It will be seen that to deprive our line from participation in traffic at Missouri river points does not benefit the people there by reducing rates nor the people at intermediate places. Nobody is therefore benefited except the lines that can enjoy the monopoly of the transportation without being otherwise injured.

Mr. W. W. Finley, General Freight Agent of the Texas and Pacific, writes me as follows on this subject: "I beg to present to you our unfortunate position with regard to business from New Orleans to points on the Missouri river. We have always enjoyed a very large percentage of the business which has moved from New Orleans to that territory; we have only been able to effect this through the transportation of this freight on basis of lower rates to that territory than charged on our intermediate business to Texas territory. Under the operations of the Interstate Commerce Law, we have been obliged to withdraw from this Missouri river business for the following reasons:

1st. The rates have been established by the Illinois Central and L., N. O. & T. railroads, upon basis of the figures contained in statement hereto attached.

2d. In making these rates the lines in question have determined for themselves the conditions justifying a smaller charge for the longer haul than for intermediate carriage.

3d. We do not subscribe to this construction of the law, and as we feel that our intermediate interests would suffer by a reduction of the figures to the Missouri river basis, we have withdrawn from the Kansas City business in the hope that we will not be forced by these circumstances to remain out of it altogether and forever on account of the claim we think we have upon the Commission for a suspension of the long and short haul principle in our favor in this case.

It is not necessary to recite to you the disadvantages under which railroads penetrating new and sparsely settled countries, labor, and the loss which must result to those roads through a reduction of rates to these new and sparsely settled local terri-

tories in order to put itself into competition for variable and competitive business. I hope that you will be able to present to the Commission this matter in such shape as will justify the suspension asked for, for in operating under such suspension, we would not be working any hardship upon our intermediate or local communities, from the fact that the rates which we ask authority to adopt are already in force via other routes."

The petition filed asking a suspension of the 4th section as to traffic between New Orleans and Missouri river points may not be sufficiently specific and comprehensive, and should this honorable Commission feel disposed to favorably consider our application, we may feel obliged to ask permission to amend our application for the suspension of the section as to traffic at all points in the State of Louisiana with those on the Missouri river and the lumber traffic in the State of Texas.

Heretofore steamships have run between New York and New Orleans, carrying considerable quantities of merchandise destined to points on the Pacific Coast, particularly to San Diego, Los Angeles, San Francisco and adjacent points, and the Texas and Pacific Railway has had no inconsiderable share in this traffic from New Orleans to El Paso, a distance of 1163 miles, and at the latter place it connects with the Southern Pacific Railway, which directly reaches all the aforesaid points on the Pacific Coast. There is competition for this trade by the Canadian Pacific Railway and water lines along the Pacific Coast, and by water lines via the Isthmus of Panama and around Cape Horn, a large part of which competition is controlled by foreign nations. The rates which water lines are able to make with profit to themselves, cannot be competed with by the rail lines from the Mississippi river to the Pacific Coast without loss if they are compelled to reduce the local intermediate rates to those which are necessary to enable them to participate in the through business.

The honorable Commission is aware that the Pacific roads have been constructed at great cost and running through long stretches of comparatively barren and sparsely populated coun-

try, the cost of operating is much greater than that of lines east of the Mississippi river as compared with the amount of local business done ; that these roads are invaluable to the country generally, that the trade with Asiatic countries is important and unless the rail lines are able to compete with the water lines, the greater part of the profits in this transportation will inure to the benefit of other people instead of our own. If competition constitutes a good reason for suspending the 4th section, surely when that competition is from cheaper water lines in the hands of foreigners, the reason acquires a greater force. The Texas and Pacific joins other interested lines in urging a suspension as to the Pacific Coast traffic.

The honorable Commission has probably gone far enough to have become impressed with the idea that interference with competition is the most objectionable, confusing and injurious feature of the act. It was undoubtedly intended to be beneficial in its effects but when practically applied it is a matter of gravest doubt whether the good it may possibly do in preventing local discriminations, will compensate for the injury to property values, and the unwholesome restraint it places upon trade and the shackles it puts upon the energies of the commercial classes. If the principle embodied in the first clause of section 4 is to be immutable so far as the action of this honorable Commission is concerned, in addition to repressing energy, it will produce great inequality in many instances. As the law does not apply to State commerce and cannot be made to do so under the National Constitution we have two classes of traffic or transportation conducted by the same carriers, under different laws and methods, so that C and D, who are near neighbors but reside on opposite sides of the line between two States, are not charged the same rates, and this inequality cannot be removed through any legislation by Congress and can only be obviated by all the States enacting the same laws, which is not likely to take place. This inequality is produced only under the fourth section. Every abuse intended to be reached by this act, whether in State or Interstate transportation, has an ample correction at common law, which applies equally to both classes.

This honorable Commission has full power to remove whatever may be objectionable and injurious under this section and relieve from any inequalities that may arise thereunder. This can be well accomplished by basing the rule of suspension upon the fact of substantial competition, even if it reaches so far as to nearly annul the operation of the section. Then everybody will understand it and merchants and railway carriers will feel free again to develop the commerce of the country. The thorough enforcement of the other provisions of the law may accomplish all that is necessary to remove complaints but should the experiment prove unsatisfactory, the fourth section which has been held as a reserved and unused power, may then be enforced to the fullest extent.

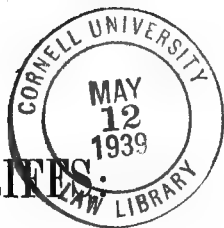
LIONEL A. SHELDON,

Receiver Texas and Pacific Railway.

New Orleans, May 2, 1887.



# TRANSPORTATION TARIFFS.



---

## A DISCUSSION

OF

THE PROPER RELATIVE RATES ON SHORT HAULS AS  
COMPARED WITH LONG HAULS.

BY

BASIL W. DUKE.

---

LOUISVILLE, KY:

PRINTED BY JOHN P. MORTON AND COMPANY.

1886



## THE ADJUSTMENT OF TRANSPORTATION TARIFFS.

---

No feature of railway management has elicited so much unfriendly criticism as the practice of charging higher rates for freight hauled shorter than for freight hauled longer distances. Yet practical railroad men contend that, when justly understood—when the entire field and purpose of railway service is considered—it may be successfully defended as a necessary method of equitably adjusting rates. They offer in its defense almost every reason on which they base their general system of tariffs; they plead in its excuse the facts which, they claim, control the conduct of transportation.

It should not be, but often is, confounded with unjust discrimination—discrimination between parties similarly situated, and receiving from railroad companies like service in like measure. For such discrimination there can be no excuse; it is rarely done, but when done, it merits and should receive severe punishment. But that is something totally distinct from the lesser charge for the “long haul” than for the “short haul;” and to confuse the one practice with the other makes a correct understanding of either impossible.

The public judgment has been already convinced that much which is apparently arbitrary and oppressive in the general system of railway charges is really fair, necessary, and adjusted to the true interests of business and natural movement of commerce. Every proper explanation, it may be stated, of the rules which govern prices of transportation, or to which they are made to conform, may be offered in justification of the practice under discussion. In nearly every instance it is forced by competition. It is in consequence of competitive rates which railroad companies are compelled to make, and do right in making, not only to earn an adequate revenue, but to properly facilitate the traffic of the territory which each is expected to serve.

So far as the cost of transportation can, or should be, taken into consideration as a factor in determining the prices of transportation, it may be justified on that score. Every one at all familiar with the discussion of the railroad "problem" knows that there are certain fixed expenses to be maintained by railroad companies—station, terminal, and transportation facilities, interest on debt, and pay of employes—whether they do much or little business, and with little regard to where or how far the freights are carried. And railroad cars are less profitable when detained by consignees at way stations, and used as private storehouses, than when they roll uninterruptedly between terminal points fully laden.

It is not, however, upon the cost of transportation that the defense of this method should be rested. It is impossible to apportion prices of transportation to the cost with any degree of certainty; while experience may enable it to be approximated with more or less success, no skill can pre-determine the cost of maintaining and operating a railroad for any given future period. Nor could fair and reasonable rates be made on such *data*, if they could be accurately obtained.

There are wide differences in the cost of constructing, maintaining, and operating different railroads. The attempt to adjust the rates of transportation according to the cost would result, if successful, in a total abolition of every thing like uniformity of rates—that is to say, a like rate for like service, a matter greatly to be desired—and in creating disastrous incertitude and confusion.

Many roads which have been constructed at heavy cost, and are exceedingly expensive to operate, offer less inducement to traffic than others much less costly. Nevertheless, it would be neither just nor reasonable to require shippers to pay higher rates for inferior service.

When this subject is under consideration, it is well to keep in mind the paradox, that "The roads which cost the most money are usually worth the least," and statutory regulation, meant to adjust prices of transportation upon the basis of cost, would, if enforced, simply have the effect of depriving the public of the use of railroads, which, if traffic was permitted its natural course, would be actively employed.

The attempt to apply to railway service as to any other service—or to any product or commodity—the rule that price must be determined strictly by cost will infallibly lead to error and injustice. As well insist that the wheat, grown on soil which yields only after the

sweat of the husbandman and the costliest fertilizers have been abundantly given it, shall sell, bushel for bushel, at higher prices than the harvests which more generous fields produce for the mere dropping of the seed. With as much reason enact that more money shall be given in hire of an old-fashioned agricultural implement than may be demanded for the use of one of newer pattern and which does better work, because the former originally cost more and is more expensive to keep in repair.

The true basis upon which to fix the price of transportation is its value—the value of the service rendered. It is a simple rule, and adapted to the understandings and experience of all men. It is one which obtains and governs in all other departments of business, and is the formula by which commercial exchanges generally, whether of goods or service, are regulated. It is the law of supply and demand. As applied to compensation for railroad service, it is not a difficult or impossible criterion, like the future cost of transportation, but can itself be readily determined. It is a question which addresses itself to the judgment of both parties to the contract of carriage, as one of immediate present effect; a question to be solved by existing conditions and facts already known to both. The shipper and the railroad company know the value of the commodity which is to be carried. They know the price it will fetch at the point of shipment, and the prices ruling in the market to which it is to be carried. Both know the existing state of each and every market in which the article may be offered for sale.

The shipper can certainly determine with reasonable accuracy whether he will find it more profitable to ship than to sell at home, or not sell at all. He can make a just calculation of what he can afford to pay to have his freight hauled to any market in which he may wish to sell. He will pay what he has reason to believe the service is worth to him, and he will not pay more. And despite all the rant and cant which has been uttered about the extortions and oppressions of railroads, no power on earth, no influence possible, can make him pay more than he believes the service is worth. For every one instance in which a shipper has paid a rate proportionately greater than the value of the transportation furnished him, there have been a thousand wherein railroad companies have furnished transportation at less than cost.

Every departure from this principle of charging for transportation *what it is worth*, and leaving that to be ascertained by the economic conditions which unerringly fix all *values*, has always been, and will always be attended with confusion and disappointment.

The theory of equal mileage rates—of arriving at an equitable apportionment of price to service, by charging rates in exact proportion to the distances which freight is hauled—has been one of the favorite and most frequent, because one of the most obvious suggestions which has occurred to those who have believed that it is possible to regulate the matter by some sort of mathematical formula, better than by a strict conformity to economic laws. Time and again has it been shown that this method is utterly impracticable, and leads to the veriest absurdities; yet, in some shape, it is constantly revived, and enters, seemingly without the conscious purpose of the author, into more than one legislative *prospectus* for railroad regulation, put forth with grave pretense of statesmanship.

The Reagan bill embodies much of the purport of this shallow and impotent device, without having the merit of adhering to the theory with logical consistency. Indeed, a more illogical provision than that of the bill in regard to the “long haul” and the “short haul” can not well be imagined. It falls short of the principle of charging rates in proportion to distance; it permits the rail companies to charge as much for short hauls as for long, but prohibits their charging more. Now, if there ever be circumstances or conditions which will justify the charging as *much* for the lesser distance as for the greater, is it not certain and manifest that there may be, indeed must be, commercial conditions which will equally warrant the roads in charging more?

The inevitable effect of the equal mileage rate would be to either compel rates so absurdly low for average distances that the roads would receive, practically, no compensation on such hauls, or to induce a rate which would operate as a practical prohibition upon the shipment of many classes of freight for long distances.

It would virtually do away in large measure with the classification of freights, a species of discrimination which all parties have found eminently just and beneficial. Many high-priced articles, or first-class freight, upon which high rates may be and are charged without injustice to the shipper or consignee, or sensible diminution either of the profit of the sale or increase of price to the consumer, must, if such

a rule obtain, either be shipped only to certain terminals or distributing points, or not shipped at all.

It would absolutely destroy the efficacy of railroad management in contributing to the development of the country further than by facilitating travel, and to that extent encouraging immigration; for it would put it out of the power of the corporations to "create traffic," by helping to build up industries and manufactures, or to move farm products to distant markets. The injurious effects of such rates in proportion to distance would be vastly greater in a country like America, with its immense territory dependent on a railway system, all parts of which should work in harmony, than in England with a smaller area, comparatively insignificant distances, and sea-board contiguous to all important commercial centers. Nevertheless, the idea has been condemned there by the highest authority and in the most emphatic terms.

The Commission of 1865 reported that "Inequality of charge in respect of distance, besides being a necessary consequence of competition, is an essential element in the carrying trade; that is to say, the principle which governs the railway company in fixing the rate is that of creating a traffic by charging such a sum for conveyance as will induce the product of one district to compete with that of another in a common market. The power of granting special rates thus permits a development of trade which would not otherwise exist." . . . "The conditions under which such rates are granted are so numerous that no special law could be framed to regulate them."

The committee of 1872, of which some of the ablest men in England were members, and which gave the subject of railroad legislation more labor, and, confessedly, far more of intelligent consideration than it had ever received before, pronounced equal mileage rates and all attempts to make rates in proportion to distance utterly impracticable and unwise. Mr. Charles Francis Adams, jr., says this committee "Showed with grim precision how, during that period" (the nearly forty years of railway experience in England) "the English railroad legislation had never accomplished any thing which it sought to bring about, nor prevented any thing which it sought to hinder." It strongly protested against any form of restrictive legislation which would "prevent railway companies from lowering their fares and rates so as to compete with traffic by sea, by canal, or by a shorter or otherwise

cheaper railway, and would thus deprive the public of the benefit of competition, and the company of a legitimate source of profit." And among the "perfectly fair arrangements which the railway companies should be permitted to make," they emphasized the "carrying at a lower rate than usual goods brought in large and constant quantities," and "carrying for long distances at a lower rate than for short distances." The committee concluded its report by the comment upon previous effort at statutory regulation of rates, that "the ill success of this attempt may well justify hesitation in entering upon further general legislation of the same kind."

The rule which would prohibit railroad companies from charging more (under any circumstances) for hauling freight short distances than for long hauls is only a partial application of the equal mileage rate, and is equally ill-advised. Its effect would be the same; that is, to prevent the public from getting the full worth of the railway system by impeding, in many cases, its best service. It has been sometimes absurdly argued that the equal mileage rate should be applied to freight, because it is applied, in great measure, to the passenger service. It may be answered that men, unlike freight, load and unload themselves, and that no commercial value is given a man by transporting him from point to point.

Yet even in the passenger traffic practices analogous to the making of special rates obtain: "commutation" tickets, "thousand-mile" tickets, etc., are sold, and when all persons may buy them, and discrimination is not, therefore, practiced, no one thinks of condemning them.

Upon no other matter connected with the practical conduct of rail transportation has so much and such concurrent intelligent testimony been given as to the propriety of fixing the rate upon the basis of the value of the service, and not necessarily estimating the distance of the haul in the computation of the charge.

In an argument upon the Reagan bill, while discussing the provision prohibiting a greater charge for the shorter distances, Mr. Albert Fink very clearly illustrated its restrictive and disastrous effect. He said:

"I have also endeavored to show that the fourth section of the bill, according to which it is to be unlawful to charge or to receive any greater compensation for carrying property a shorter than a longer



distance, is unjust as tending to restrict competition between the railroads and the water routes.

“As a general rule this principle is fully recognized and acted upon by railroad companies, as I have already explained, and it is proper and right that it should be; but there are exceptions to it, as there are to all general rules regulating railroad tariffs. Should it be attempted to enforce this rule in all cases, it would result to the injury of the public, not to its benefit. For example, take the traffic between New York and New Orleans, the bulk of which is carried by ocean steamers at very low rates; the railroad companies can compete with the steamers for the higher classes of freight, on which the cost of insurance is considerable, and they derive from this business a small profit.

“Now, the effect of the proposed law is to oblige inland rail routes between New York and New Orleans to charge no more from New York to the interior points located on these routes—say to Atlanta or Montgomery—than the ocean steamers charge from New York to New Orleans.

“There is neither sense nor justice in such a demand, nor can it be enforced. The railroad companies can not work as cheap as ocean steamers, and place the interior points precisely upon the same footing as if they were located upon the sea-shore. If the attempt is made to force them to adopt the low rates from New York to New Orleans, upon the whole of their inland business, they simply would retire from the New Orleans traffic altogether, which, compared with the inland traffic, is small, both as regards the tonnage and the profit derived from it. The only result of the enactment of the Reagan bill in this case would be to prevent the railroads from competing with the ocean steamers, and to give the latter the monopoly of carrying freight between New York and New Orleans, without in any way restricting the railroads from charging such rates as they would to the interior points. The tendency would be to increase their rates on the inland freight to compensate for the loss of profit on the New Orleans business. The ocean steamers would probably increase rates of transportation to New Orleans as soon as the railroads cease to compete, and the people of New Orleans would be deprived of the facilities and convenience of railroad transportation.”

And in his testimony before the Senate Committee on Education

and Labor, pp. 13 and 24, Mr. Fink has very clearly explained the *rationale* of the railroad tariffs, as suggested by the general intent and uses of the railroad system for the service of the entire public, and as exacted by the necessities of their own business, as well as adjusted to the constant and imperative influences of competition.

"The proper plan," he says, "is to assess railroad charges in accordance with the value of the services rendered. No body should ask service for less than cost. The tendency of railroad competition is that by one road underbidding the other on the competitive business the rates soon become so low that the business is worth nothing. They have often carried it, and sometimes carry it yet, at less than cost; and this is not to the advantage of the public. The public can always afford to pay reasonable rates for the service.

"It is not to the advantage of the public at large to do otherwise, because if you send all these railroad companies into bankruptcy, and thus ruin the people (who are really the owners of the railroads), you ruin the credit of the country, and you ruin the industries that are dependent on railroads, such as the iron industries, and the other manufacturing establishments which furnish supplies to the railroads; you also necessarily reduce the wages of the laborers. When railroads can not earn money, the laborers employed on the roads have their wages reduced, or frequently lose their pay altogether. I may refer to the difficulties which arose in 1877, during and after a long railroad war, when the employes rose and 'struck.' This was the result of low wages or reduced time of labor during the railroad wars."

Mr. Fink was asked if the railroad companies ought not to leave competitive business, which they could not get without greatly reducing their rates, to the water routes. He answered that they would not do that, and it was better for the public that they should not. The competition served to keep both "in order," the steamships as much as the railways. Both were required to conform to the natural course of commerce.

The railroad commissioners of Alabama, in their report for 1882, after discussing the question in the light both of cost and value of railway service, thus summarize their conclusions:

"These facts and illustrations conclusively demonstrate that there would be no justice or fairness in fixing the freight charges of railroads strictly according to distance, as is done in the case of passenger fares, and particularly on short hauls of freight.

“Distance does indeed enter as an element into fixing the freight rates of a railroad, but it is not a consideration so controlling as competition. The truth is that the longer the haul the cheaper a railroad can afford to transport freight in proportion to distance, and it is well for commerce and business generally that this is true.

“Whoever would attempt to regulate the rates of a railroad strictly according to distance, as in the case of passenger fares, would cut off the trade of all the interior sections of the country from the cities and best markets, and to this extent would injure both and the general public; while at the same time it would greatly reduce the business of railroads without benefiting any body except a few greedy merchants at poor markets in a few cross-road towns, who sell goods at extortionately high prices, in absorbing the produce of the country at low prices.”

Even the Georgia railroad commission has recognized the principle that the value of the service ought to be taken into consideration in determining the compensation, and has not insisted on any arbitrary rule in the nature of regulating prices of transportation according to distance. In prescribing freight rates for the railroad companies operating within their jurisdiction, the commissioners permitted a reduction of rates at competitive points, without requiring a corresponding reduction along the whole line. And in their third semi-annual report they say:

“We can not too strongly express the conviction that it is not to the interest of the public to get work out of the railroads for less than it is worth. It is the general interest that capital and profits should be distributed aright. It is just as unfair to discriminate against railroad capital as against mercantile or agricultural capital; and either of these is fully as unjust on the part of the public as railroad discrimination among customers entitled to equal rights is on the part of the railroad. Such unfairness on either side drives capital out of its natural channels into artificial channels less suited to the general welfare.”

No writer in Europe or America upon these subjects is held in higher repute, or is more entitled to be regarded as authority than M. de la Gournerie, and his official position has enabled him to acquire most accurate information and experience regarding them. He has borne frequent and emphatic testimony to the justice of the principles

*Copy Recd 49 Aug 3831*

of adjusting railroad tariffs adopted by practical railroad managers both in the Old World and here. He rests the whole case on the argument derived from *values*, and the fact that, as he puts it, "The law of supply and demand contains a regulative principle indispensable to society. . . . It is a universal suffrage, where each person is frequently called upon to vote as a producer and as a consumer. The totality of what is offered for sale, the totality of demands, determine the impulses, and their resultant governs the industrial world."

Applying the principle to the question of railroad charges, he says:

"An article of transportation, like every article of goods and every service, has a value determined by the action of supply and demand; we should pay for it not *what it costs*, but *what it is worth*. An exception to the general law of transactions should be made only for powerful motives."

Among the instances he cites in illustration of his proposition is the following, given the more particularly because of the admirable clearness with which he deduces from it certain general rules:

"The Northern and the Mediterranean railroad companies carry wool from Marseilles to Roubaix at the rate of 76.50 francs per ton. A few years ago the wool sent from Algiers to the same destination was carried to Dunkirk by English vessels for 65 francs. The expenses at Dunkirk and the carriage thence to Roubaix barely exceeded 11.50 francs; so that under the action of supply and demand the transportation of wool to Roubaix had practically the same value from Algiers as from Marseilles.

"The wool shipments from Algiers could not be attracted to our railroads and secured for French vessels except by asking 76.50 francs for the whole distance. This is what the companies agreed to do. They pay 20 francs for the freight across the Mediterranean, and retain the sum of 56.50 francs, which they consider sufficient to indemnify them for the expenses imposed by the transportation from Marseilles to Roubaix. We may suppose that they may find a slight profit in this transaction; a railroad in its own interest and in that of the country ought not to neglect any traffic of a kind that will increase its receipts more than its expenses.

"The inhabitants of Marseilles believing, no doubt, that the cost of transportation determines its value, demand that the wool which they ship be charged at the same rate as that which comes from Algiers.

If the rate of 56.50 francs is remunerative, they say, the companies should not ask more.

“The different units of transportation carried by a company are far from giving equal profits. If, because some of them leave as net profit only a very small part of the receipt, we assume to regulate the tariff so that it shall get only the same proportion of the whole gross receipts, it will not be able to meet the obligations which it has contracted. The certain result of requirements of this kind would lead the companies to refuse all shipments on which they could not make a high profit, and consequently to abandon a considerable income while depriving the country of cheap transportation for a great quantity of merchandise.”

M. de la Gournerie shows how the same apparent anomalies in the railroad system obtain in France just as they do in England and America, and induced by precisely the same causes. He states that “they are not new in the transportation business. Before the establishment of railroads the carters likewise imposed a higher rate from Paris to Angers (191 miles) than from Paris to Nantes (266 miles),” just as the wagoners formerly made similar charges in this country.

“The boats, on their part, formerly charged more from Chalons-sur-Saone to Villefranche (60 miles) than from Chalons to Lyons (81 miles); more from Lyons to Tarascon (156 miles) than from Lyons to Arles (165 miles). . . . The railroads are under the same conditions as the carters and the boatmen. I do not see how it could be possible to establish that transportation never has a less value for a longer than for a shorter distance, or that each separate transportation should not be paid for according to its value.”

It is impossible to eliminate from the consideration of this question the influence of competition; and it must enter into every phase of its discussion, just for the reason that it is the most prominent and potential factor in determining the results. When a railroad meets at a given point another railroad line not under the same management, or a water route which can carry the same freight to the same destinations or equally favorable markets, it must compete or it must abandon that particular business—give up the carriage of that freight. If it competes, solicits the business and takes the freight, it must do so upon conditions of transporting that freight at a rate certainly as low

as the rival line will carry it. Necessarily sharp and unregulated competition at some of these points quite frequently forces rates down far below any remunerative standard, and compels the roads to carry for less than cost. Just here arises the question which has occasioned so much of difficulty and contention. Should the railroad companies, when thus compelled to reduce rates at competitive points or lose the business which those points furnish, be required at the same time to correspondingly reduce rates along their entire lines?

The advocates of the Reagan bill, the advocates of equal mileage rates, all those who unite in condemnation of competitive rates of any character, will answer this question affirmatively, or virtually abandon the position they have assumed. Presupposing, even, that the rates of transportation to the intermediate (or other than competitive) points, are reasonably just and not more than the service is fairly worth, this class of thinkers, nevertheless, assert that the forced reduction at the competitive points makes a maintenance of previous rates (and rates previously reasonable) at intermediate points inexcusably wrong. This is very curious logic. It must find a basis in some ethical principle not commonly understood; it has no support in ordinary morality, and is in absolute contradiction of all generally accepted commercial and economic principles. That it is to the interest of the railroad company to take the business offered at the competitive point at a reduced rate rather than lose it altogether is clear and undeniable. Its line is already in operation, its equipment and structure must be maintained, its terminal and station facilities must be kept up, a certain amount of expense must be and is incurred in any event. The company, therefore, can better afford to take this business at less than cost than to lose it, because even the low rate it pays swells, to that extent, receipts; defrays, in some measure, the current expenses, and helps to diminish the burden of outlay. In the words of M. de la Gournerie, a railroad "ought not to neglect any traffic of a kind that will increase its receipts more than its expenses."

On the other hand, by competing for the business it does no injury to, but is ultimately enabled to benefit the general public and the people at the very points where the complaints are heard. For by increasing the volume of its business it is enabled to reduce its general rates; nor can it be denied that such has been the result. The increased mileage of American railways from 35,000 in 1866 to 127,000 miles

at the close of 1883, and the vastly increased traffic thus produced has occasioned the most astonishing reduction of rates; the average reduction has been nearly 66 per cent. The effect upon the general development of the country also has been most remarkable. But why elaborate this feature? Every one not only admits but insists that competition is wholesome and necessary. How is it possible to have competition unless railroads compete? If, then, it is to the manifest and positive interest of the railroad to struggle for business at competitive points, and it is right from that stand-point; and if, further, it is to the interest of the general public that the roads shall compete, how and wherein is it worthy of censure, and does it call for suppression? Can it be possible that these two "rights" make a "wrong?"

"But," say the censors, "if the railroads reduce rates and carry for less than cost at the competitive points, they should do the same at all other points on their line;" in other words, they should deliberately destroy themselves. Peculiar circumstances induce certain advantages for a few favored localities, which can not be universally extended without ruin to the whole system. "Therefore," say these severe moralists, "since you have given unto one give also unto all, although it ruin all." Deprive the country generally of the benefit of railway service, because competition enables some localities to obtain it more cheaply than others. Was ever the "biting off the nose to spite the face" policy more cogently illustrated?

Some years ago one of the numerous and periodical outcries against coal rates occurred in Massachusetts. It was insisted that the Boston and Albany Railroad Company, in endeavoring to meet the coal competition at New York harbor, had discriminated against certain points, and especially against Pittsfield, in Massachusetts, by maintaining the local rate from Hudson to that point, \$1.25, when the competitive rate was lower. The Board of Railroad Commissioners of Massachusetts answered the complaint as follows:

"But it is argued in reply that the railroad company is charging unreasonable local rates in order to recover the losses it incurs by persisting in doing its through business at a loss. This, it is insisted, is unjust, and constitutes a good cause of complaint. In the first place, however, as the commissioners thought they very clearly showed in their report already referred to, the rates now charged by the Boston and Albany road for the carriage of coal to Pittsfield are, considering

the nature and amount of the traffic, neither unusual nor unreasonable; and in the second place, it must be remembered that neither the Boston and Albany nor any other railroad engaged in the through-freighting business has any control over the rates at which it does that business. It can only influence them by taking the extreme course of going out of the through business altogether, and charging local rates on every thing which goes over the line. For the Boston and Albany road to undertake to do this, as the complainants very well know, is simply out of the question. The very suggestion of such a policy on its part would lead to a popular excitement and clamor in the State, which would put a stop to it at once. The fact is, as the business firms of Pittsfield must perfectly well understand, so long as the present system of railroad competition continues, rates must vary. The business community which enjoys the advantage of low through rates will have to accept the burden of relatively, if not absolutely, high local rates. If the companies are compelled to reduce every thing *pari passu*, they would have to go out of the freighting business."

"*The business community which enjoys the advantage of low through rates will have to accept the burden of relatively, if not absolutely, high local rates.*" Mark this incisive truth in the passage just quoted; rarely has a more pregnant sentence been penned, or the gist of a matter more completely compressed into one. It is surprising that those who condemn this practice in railroad management of taking business at cheap rates, which could not otherwise be gotten at all, do not discover that it does and must obtain in all transactions, and in the whole business of mankind.

The farmer who sells only when he can command the very highest prices, and refuses to part with any portion of his produce unless he can get as much as he may have received at some more favorable period, or as much as some one more eligibly located receives, will not be so prosperous in the outcome as if he utilizes all that he raises. He will find it a thriftless and short-sighted policy to permit a part of his crop to rot and waste rather than sell it at low prices. The merchant who has made his arrangements to do a certain amount of business with certain customers, or at points whose trade he feels assured he may control, never hesitates to extend his business when a favorable opportunity occurs, although to do so he must sell at reduced prices. He knows that the new customer must have an inducement, he is aware



that his goods may be of less *value* to the purchaser whose custom he seeks, if that purchaser be so situated that he can get similar goods more cheaply and conveniently from other merchants.

The principle is of universal application, and is one whence every body in turn and in time derives benefit. Those who control the various modes of water transportation, deemed by legislators impeccable and immaculate, and never menaced with statutory regulation, even these sinless and conscientious common carriers recognize it. Competition prevails on the lakes and rivers, and between the water routes themselves, sometimes reducing rates to unremunerative figures. The ocean craft carry American goods to Liverpool and Havre, a distance less than four thousand miles, at higher rates, sometimes, than the same or similar vessels transport freight from Australian, Indian, or South American ports to the same European destinations, covering distances three or four times as great. This is done when the vessels sail in ballast from the other side of the Atlantic, for the express purpose of carrying back the American merchandise or produce, but go out to Australia, India, or South America laden with valuable and remunerative cargoes, and find it better to bring back low priced freight than return empty. The value of the service in every instance determines the price of the transportation. It is worth so much to the American shipper and he pays it. It is worth less to the Australian shipper; he will pay only what it is worth, and the ship takes it at the low rate rather than lose the carriage altogether.

Transportation is simply one form of labor out of many necessary to make products and commodities marketable. It is an element which enters into the ultimate value, and therefore price, of every article which is not consumed on the spot where it is grown. But the peculiar value of transportation is determined, not solely by the value of the article moved, but also by the amount and kind of the transportation *itself* which the owner or shipper of the article may be able to purchase. If all products and commodities were consumed just where they are grown or made, transportation would have no value at all. The difference between the value or price of the article at the point of shipment and its value at its destination or market will, of course, largely influence the value of its transportation. But if there be a number of different routes or modes by which the article may be carried between the same points or to more than one market—*i. e.*, com-

petition—the value of the transportation is still further affected, and affected just in proportion as the different routes compare in speed, convenience, and certainty.

Now, since the amount of competition and the number of competitive points have the effect always of reducing rates, transportation must necessarily become proportionately cheaper as its distance increases; because, the greater the distance the greater will be the competition and number of competitive points. There are not only more routes and modes by which freight may be carried between terminal points one thousand miles apart than between points five hundred miles apart, but there are a greater number of connections with other commercial or distributing centers which influence the traffic. There are more routes between Chicago and New Orleans than between Louisville and New Orleans, and more between Louisville and New Orleans than between Memphis or Atlanta and New Orleans; while Chicago and Louisville both feel the influence of St. Louis upon their Southern trade more than they would were they nearer to these markets.

It may be said, in a general way, that the local traffic of a railroad is its regular business, and the through traffic is incidental. The local traffic may be said to resemble the trade which the merchant (in the illustration heretofore employed) has a right to rely on, and has made all his arrangements to conduct, while the through traffic is in the nature of the casual trade which he must reach after, bid for, and obtain at some reduction of price and profit.

The original purpose for which railroads were constructed was the transaction of a commerce that might be termed local. By connecting with each other they formed long routes over which through traffic was induced; and the ultimate consolidation of many connecting roads into trunk lines did not and could not alter the terms upon which the commodities which moved long distances were transported. Indeed, consolidation of short connecting lines into comprehensive systems, as well as the eventual construction of roads between very distant terminal points were both responses, not only to the increasing commercial growth and necessities of the country, but to the imperative demands for cheap rates upon long hauls.

When railroads were first built and put into operation in America their construction was confined to the parts of the continent which had been long settled, where were found the most populous communities,

with already existent commercial relations, and accustomed to commercial exchanges.

The railroad simply superseded the old methods of carrying the commodities of commerce and of facilitating traffic by a mode of transportation speedier and of far greater capacity. The business which the railroads at first did, therefore, was, as has been said, what would in their parlance be termed "local." The prices of rail transportation, while cheaper than those of the carts and wagons, were based upon what was supposed to be the reasonable value of the service.

The *maxima* rates of charge which were incorporated in nearly all of the earlier charters, and which would now be regarded as excessive and are not even approximated, were but the expression of the legislative idea of the *then* reasonable charge.

But the inevitable effect of furnishing better modes of transportation and increased facilities for the conduct of trade was, as it always is, to quicken commercial activity, stimulate production, and vastly multiply the demand for all articles, and as a consequence the demand for transportation. A larger surplus of all commodities was every where produced, and shipments to greater distances from the points of production became more frequent.

Until 1861 or '62 railroad construction was intended to serve a traffic already existent and a territory already peopled. After that date many miles of railroad were built to stimulate and accommodate immigration, to settle territory previously almost uninhabited, and to create a commerce which did not before exist.

It is not necessary to discuss here the wisdom of the latter policy; but it will at once be perceived that it operated to immensely accelerate the tendency already noticed as an effect of rail service to induce exchanges between remote points—shipments of freight for long distances.

When, therefore, an almost unlimited general railroad system had multiplied, in connection with the water routes, the modes and avenues of transportation indefinitely, and had made the competition of product with product felt from one end of the continent to the other, the rates on the long hauls became necessarily reduced in the ratio of these influences.

The character of competition which is most generally felt and easily

recognized, and of which account has been heretofore taken in this article, is the direct competition of rail with water or of one railroad with another—a rivalry, in short, between different carriers, all having transportation to sell.

But there is another kind of competition almost if not equally as potent—the competition just mentioned of product with product. And it is one that must continue to increase with the development of the country and the cultivation of its resources. Its effect upon prices of transportation is constant and emphatic.

The price of wheat at New York may be fixed by that at Liverpool, but when the grain from the Northwest thunders in on full trains over the tracks which stretch away beyond the Mississippi, the iron lines which penetrate the Middle States and the Ohio Valley must haul the wheat grown there for rates which will enable it to compete in the market with that of Iowa and Dakota. Unless the railroads can or will enable an article produced in one section or part of the country to meet the same article produced in some other section on fair terms in any given market, it will not seek that market, and the railroad will lose just so much transportation.

A most excellent illustration of this competition of product with product, and of how it operates to reduce the prices of transportation, is furnished by the history of the traffic in early vegetables and fruits brought from the South in the spring or before similar productions have ripened in higher latitudes. When this trade, which is of comparatively recent date, began, it was confined to the roads along the Atlantic sea-board, which carried the fruits and vegetables of Florida to New York, Baltimore, and other Eastern cities. The roads further west determined to create a similar traffic, and, to do so, built cars especially adapted to the trade and offered very low rates. The consequence was that not only much of the Floridian trade of this character diverted to the Western roads, but an extraordinary production of early vegetables at Mobile Bay and other points in Alabama and of fruits in Tennessee was induced. Some years ago corn shipped from Louisville to Montgomery, Alabama, commanded a rate several cents higher per 100 pounds than now, because the Alabama corn now competes with the Kentucky corn. In the same way an abundant corn-crop in East Tennessee compels lower rates on corn shipped from Kentucky to Georgia. Until quite recently cement was shipped from

Louisville to Atlanta at 24 cents per 100 pounds. Competition with the cement manufactured at Grayville, on the Western Atlantic Railroad and at other points in Georgia, now compels a rate of 12 cts. per 100 pounds, or the Louisville cement can not be sold in Atlanta at all.

This form of competition is extended almost indefinitely. City competes with city, section with section, country with country. The Indian and Russian wheat competes with American wheat; Odessa with Chicago.\*

Universal activity is imparted to the commercial world by the pliant and ready service transportation yields to this competition. Production may safely be kept at the *maximum* when the surplus can always find a market. The residue reserved for home consumption becomes more valuable if the surplus can always be sold. If Kansas raises fifty millions of bushels of wheat, and requires only ten millions for her own people, the ten millions have a positive increased value when she can ship and sell forty millions.

In the Senate during the pendency of the Reagan bill, Mr. Beck, of Kentucky, discussed these questions after a fashion somewhat surprising in one of his strong sense and usually accurate information. He said: "It was proven before the Committee of the House that a railroad would haul a bale of cotton from Memphis to New Orleans for one dollar a bale, and charges three dollars per bale from Winona to New Orleans, which is one hundred and twenty miles south of Memphis and nearer to New Orleans on the same line. I am seeking to guard against that class of discriminations without going into any other question just now. There can be no injustice in saying that no railroad shall charge for hauling over a part of its line more than it charges for hauling over the whole length of its line."

Mr. Beck is not singular in his desire to select an apparent abuse of power by the railroad companies and discuss *that* apart from and without any examination of the reasons which induce or the circumstances which attend it.

It is quite a common predilection with writers and speakers who express his views. It is doubtless quite convenient to "seek to guard

---

\*The differential rates fixed by the Joint Executive Committee for the trunk lines, from Chicago to New York, Philadelphia, and Baltimore were based in great measure upon the ocean rates from those points to European ports. The rate from New York to Liverpool and Havre is less than from Philadelphia to those ports. It is less from Philadelphia than from Baltimore. The rail rate was therefore made less from Chicago to Philadelphia than to New York, and less to Baltimore than to Philadelphia.

against that class of discriminations without going into any other question," but when the "other question" is part and parcel, cause and *raison d'être* of the alleged "discrimination," its consideration can not be fairly or logically avoided.

"It will not do to say," he proceeds, "that they have to haul more cheaply from Memphis because of competition, as will be contended in the Winona case; for example, because there is competition with the river, and, therefore, they are compelled to make up a profitable through haul by charging enormous rates to the people of Winona, who can not reach the river.

"The very evil I propose to guard against is that a railroad shall not be permitted to reduce its rates below the cost of hauling at the end of a line in order to run off some competing way, so that they may absorb the trade, and, the moment they run off their competitors, put up the price to what they please, and in the mean time make up the loss they incur on the through hauls by doubling, trebling, and quadrupling the charges along the line."

When a man of Mr. Beck's conceded ability speaks in a manner so positive, and bases an argument in behalf of restrictive legislation of the nature he advocates upon general allegations of the kind in which he has indulged, it is well to examine both his statements and his conclusions. Is Mr. Beck in earnest when he professes apprehension that the railroads will drive shipping and traffic from the Mississippi River and "absorb the trade?" This is a matter which must be determined by the aid of facts and experience.

A correct understanding of it can not be attained by mere assertion; certainly not by exaggerated assertion. Is there any good reason for believing that the railroads will ever be able to transport freights through the Mississippi Valley—which may be moved on the river—at rates which the boats will not be able to successfully meet? No one knows better than Mr. Beck that water transportation can always be furnished at less cost than transportation by rail. The expenses of the water routes are far less. Now while there will almost certainly be a constant future diminution in the number of passengers carried by the Mississippi River steamers, will there be any decrease at all in the present volume of freight which they carry—especially of heavy traffic for which rapid transit is not desired? Can such decrease be predicted because of existing facts?

The statistics furnished by the tenth census, for 1880, indicate no cause for apprehension that such traffic will fall off.

Upon the Ohio River there were in 1880, 473 steamers with an aggregate tonnage of 107,472.48, an invested capital of \$6,051,522, and carrying 3,961,798 passengers, and a freight traffic of 2,446,353 tons. On the Upper Mississippi there were 366 steamers with a tonnage of 83,918.09, an invested capital of \$6,086,760, which carried 1,299,553 passengers, and, including 867,120 tons towed by the barge lines of St. Louis, 3,500,035 tons of freight. On the Lower Mississippi there were 315 steamers with a tonnage of 48,303.06, an invested capital of \$3,260,450, which carried 1,385,357 passengers, and 1,276,972 tons of freight.

The total receipts and shipments of all classes of freight at New Orleans, excepting ice, stone, lumber, brick, and agricultural machinery, was estimated for 1880 at 2,300,000, and it is added that "These exports show a material growth since the completion of the jetties and the increase of the barge lines." 1,154 steamers with an aggregate tonnage of 239,693—about equivalent to 20,000 freight cars with an adequate equipment of locomotives—and the barge lines may be said to represent the transportational capacity of the Ohio and Mississippi rivers.

So long as it is maintained some confidence ought to be felt in the ability of the water carriage to hold its own against the encroachments of the railroad.

These figures would seem to show, too, that the water craft have carried the larger share of traffic just where they have come in most direct competition with the roads, for the large tonnage given the barge lines—which is chiefly at St. Louis—swells the freight traffic of the Upper Mississippi to its larger comparative dimensions.

It is not contended, of course, that the volume of river traffic has increased in the same proportion as that borne by the roads; nor will it ever do so. On the contrary, there will probably be a greater *relative* difference between the two; but all the facts go to prove that there will be an *absolute* increase of transportation by the river, and that it will always suffice to maintain competition at points where it now exists.

No one need fear, then, that the railroads which run from the Ohio to the Gulf will ever force the boats which ply on the waters of the

Mississippi to quit its bosom, and, having gotten rid of their rivalry, make up the losses incurred in destroying such competition by "doubling, trebling, and quadrupling" charges.

Nor is there any danger that competition of railroad with railroad will cease. The rails once down, the road is "there to stay," and can not be moved to some other line because competition reduces its rates. I might trust to the explanation already attempted of how many influences combine to cheapen rates on long hauls as a sufficient response to Mr. Beck's complaint in behalf of Winona. But when he makes a charge it deserves specific attention.

He very emphatically pronounces that "it will not do to say that they have to haul more cheaply from Memphis because of competition." With all due deference, whether "it will do to say" so or not, it is so; it is a stubborn fact, and the controlling fact in the case.

The railroad companies have ascertained by that sort of experience and proof, which no amount of speculative argument can controvert, that they *do* "have to haul more cheaply from Memphis on account of competition," or not haul at all. They have examined, considered, discussed, and practically tested this problem in all its phases and in every conceivable way, and it is reduced to the simple alternative of "haul for the low rate or let it alone."

It may possibly be better for all concerned and juster to the general public to compel the railroads to lose all such freight, and not carry a bale of cotton from Memphis to New Orleans; but it will do no good to predicate the prohibition on false premises.

The railroad is more necessary to Winona than to Memphis. The haul from Winona to New Orleans is more valuable to the Winona people, than is the haul from Memphis to New Orleans to the people of Memphis.

Before the road was constructed the Winona shippers could by no means or mode get their cotton to New Orleans so cheaply as three dollars per bale; a vast deal of money was invested in a railroad, which had the effect of furnishing them transportation at that price.

Surely it is fair to look at both sides of the question. To regard in some measure the former as well as the present situation of Winona, and give some consideration to the claims and interests of the parties who expended their money in building the road. To obtain cheap transportation for Winona it was necessary to remove Winona to the



Mississippi River, to move the Mississippi River to Winona, or to build the railroad. If lower rates have been obtained, and rates reasonable in themselves, Winona has no right to complain of Memphis, which has both the road and the river.

It should be remembered, also, that the cotton shipped from Memphis is not grown in the streets of Memphis. It has been brought from a number of points more or less distant, each bale paying its own local rate, and the one dollar per bale from Memphis to New Orleans is only a part of the entire rate paid on the cotton from the place where it was grown to New Orleans.

Low rates are made from terminal points, distributing points, or centers of transportation—by whatever name men may elect to call them—because they gather up commodities and produce and reship them to distant destinations. The freight charge upon this last shipment is only a part of the entire charge which the article pays.

But distributing points or competing points can not be made “to order,” and it is impracticable to force them by legislation. Natural or geographical advantage of situation has much to do with making them, and the influences of commerce and conveniences of business imperatively determine their tenure of existence. Of course, superior enterprise exhibited by some community, as in the building of a railroad, will better its condition. But those which nature and man have both favored must inevitably have the advantage. There must necessarily be a limit to the number of these distributing points. As well attempt to make every farm a point of shipment where through rates shall commence, as every station or every town.

Mr. Beck complains that the railroads “have destroyed the only other highways the people had before the railroad was built, as they have done virtually in my State, as my colleague knows.”

Now this is putting it rather strong. It may be that because the railroads carry more cheaply and conveniently, the “other highways” are not so much used as formerly. But the other highways still survive for the use of all who prefer them. Improved and cheaper methods will always “virtually destroy” those which are more imperfect and expensive. Human nature may be perverse in this respect, but such is its invincible propensity. Fire-arms made bows and arrows obsolete, vaccination superseded inoculation, gas has largely restricted the use of candles, electricity is making rapid inroads on the domain

of gas, balloons may some day cause railroads to be regarded as too slow for passenger traffic.

But certainly no one should complain of all this. The world gets something better all the time; and whoever chooses can always shoot with bows and arrows, burn candles, and be inoculated *with* the small-pox rather than be vaccinated to prevent it.

But Mr. Beck goes on to say that while the railroad companies have a "monopoly" of their tracks and road-beds, upon which no other persons can put cars, "every man at Louisville or Cincinnati, or any where else, if he has money enough, can put his barge with goods on the Ohio or Mississippi, can float it down to New Orleans, land at any public wharf, and ask no favor of any railroad or steamboat corporation."

Of course he can. He simply doesn't want to spend the money necessary to build and equip the barge, and pay and provision the crew; and he doesn't want to take the risk, and lose the time from his regular business, and constitute himself a transportation company, ceasing to be *pro tempore* a farmer or merchant. That is all. If "he has money enough" he can not only put on the barges, but he can also build a railroad—charters are easily gotten—or buy one, many are in the hands of receivers and may have to be sold cheap.

The refusal of the corporations to permit "every man" even "if he has money enough," to put his own locomotive and cars on the railroads and run them to suit himself, seems to strike Mr. Beck as very harsh, and to those who think like him it is perhaps indefensible. Yet some suggestions may be offered in its excuse.

An impression prevails that a better discipline can be enforced in this way, and better and more certain results obtained. It is thought that the lines can be operated more efficiently, as well as more safely, if under one executive management, than if the public have access to them, as to a turnpike or a dirt road, and all men use them at their own time and pleasure. It is contended and indeed believed by railroad men, that the precautions now in use to secure the safe conduct of trains and minimize the risk of accident could not be successfully observed if "every man" were allowed to take the track with his own private vehicle whenever it suited his inclination or convenience.

But inasmuch as this free and universal use of the railroads has never yet been attempted, and Mr. Beck evidently believes it practi-

cable and proper, it may be that the experiment ought to be tried. It may be that to establish in fact the contention in law, that the railways are public highways, such general use of them ought to be permitted and encouraged. A few hundred "wrecks" more or less, and several thousand lives more lost annually, may be a small matter to a free people—not worth consideration when a question of "monopoly" is involved—yet there seems to be a prejudice against Mr. Beck's policy even in the popular mind.

If such a measure be enacted as the Reagan bill, compelling railroad companies to discontinue altogether the practice of charging less for long than for short distances—prohibiting it under all circumstances and conditions—the effect must be extremely disastrous on the cities already established and recognized as distributing and shipping points. Capital already collected at such points to be used in advances on staple products, or expended in providing the facilities for handling and expediting large amounts of merchandise and produce will be in large measure paralyzed and perhaps lost.

Cotton, instead of receiving through rates at Memphis, will pay the same thence as from the way stations, and the railroads taking it up at the local stations will be forced to make non-competitive points make up on local rates for the loss of competitive business. In order that the law shall not be violated high rates will be charged everywhere.

Nashville is now a considerable shipping point of tobacco. It comes there, paying a local rate, from all parts of Tennessee, and is shipped thence South or East at reduced or through rates. But under the operation of legislation of this character the roads could no longer permit Nashville the benefit of through rates as heretofore, or rates reduced by competition.

The change of policy would be very detrimental to Nashville, but equally so to the smaller shipping points and farmers; for many of the latter have been helped by advances of Nashville capital. Many points of original shipment would be required to pay higher rates than they are charged under the present system.

The Reagan bill, with the prohibitory provision on charges in it, would revolutionize the system of commercial exchanges and the whole mercantile business of the country. It would greatly injure the trade of the large towns and terminal points, make producers pay high

where they now pay low through rates, discourage production, in short, hurt many and help none.

Unless the present system of railway rates—that is, charging always relatively less and sometimes absolutely less on the “long haul” than on the “short haul”—be permitted and continued, the people of the interior can not reach the markets of the sea-board with their products, and the sea-board cities must relinquish a large part of the business they are now doing with the interior.

No one believes or will claim that any perfect and altogether scientific system of railway tariffs has yet been devised; it is scarcely to be hoped that there ever will be. Railroad managers are the readiest to admit that there are defects and faults in the general methods which they are compelled to adopt in the adjustment of prices of transportation for a vast and varied traffic, for they have to deal directly with the innumerable factors which complicate the problem and difficulties, some of which are insuperable with the best purpose and effort; and under the most favorable conditions rates can never be absolutely but only relatively just, inclining sometimes in favor of the carrier, and very often in favor of the shipper. No work done by human agencies will ever be perfectly done.

But the grievances and ills, whatever they may be, which the immense transportation business of this continent evolves, which its necessary friction produces even when its machinery is in best condition and is working most smoothly, can never be obviated by precautions, or cured by remedies of the nature suggested. Empirical treatment will only aggravate the disorders already existing.

No good can be accomplished by pursuing a policy calculated to disintegrate the great systems and trunk lines which have been formed in response to the demands of commerce, and which, lessening the expenses of railway administration, have cheapened as well as facilitated transportation.

Legislation can effect nothing in determining what is an equitable and proper charge for railway service, and, therefore, nothing in inducing or compelling it. It is a matter of grave doubt whether any legislation upon this subject can ever be beneficial; but if it be needed at all, it is that, while the widest and freest scope be left to healthy and legitimate competition, a stop be put to that reckless competition which makes all commercial business insecure, by making all rates un-

certain, which renders any just calculation impossible to the merchant, and places the solvent railway corporation at the mercy of the bankrupt road.

If the judicial idea of what is public policy as applied to contracts between common carriers for the maintenance of rates were to change as the circumstances under which it originated have altered, or railroad companies were forced by statutory penalty to observe and execute agreements between themselves, it might be better for all concerned. The result would be a stability in commercial transaction not now obtaining, and, the agreement binding only the corporations, no shipper would be affected by it.

BASIL W. DUKE.









# Before the Inter-State Commission.

HON. W. S. CHISHOLM,  
*VICE-PRES. SAVANNAH, FLORIDA & WESTERN RAILWAY CO.*

ATLANTA, GA., APRIL 28TH, 1887.



GENTLEMEN :

All of the petitioners before the Commission ask the same relief.

The facts which have been elicited in the different cases are in some respects different, but all ask the suspension of the fourth section of the Act in special cases. There are two constructions which may be given to this section. One construction will materially affect the companies which I represent. The other construction will affect them, but not so seriously.

Section 4 prescribes :

*That it shall be unlawful for any common carrier, subject to the provisions of this Act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance.*

The point is upon the meaning of the words "aggregate compensation." Do they refer to the aggregate joint rates on different lines, or to the aggregate rate upon one particular line?

My suggestion is that the words refer to the aggregate rate upon a particular line. I read in connection with Section 4 to sustain that interpretation Section 6.

Section 6 prescribes :

*That every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established, and which are in force at the time upon its railroad, as defined by the First Section of this Act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates and fares and charges.*

Here is an interpretation of the word "aggregate" in the schedule which is required to be published according to Section

9; and it is to be determined by an addition to the transportation of the terminal and any other charges which may be established by any rule or regulation in force upon that line. See also the definition of a "railroad," in Section 1, which I will read presently.

Further on in Section 6 there is a provision made for joint rates.

*Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for, copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. But no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares or charges thus made and published.*

In this part of the section, referring to joint tariffs, the Commission will perceive that the plural number is used. The section speaks of lines. In Section 4 the reference is to a common carrier in respect to a line. The plural is not used. The further limitations in Section 4 all support this view. They are that the transportation must be for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance. Now, if I should be right in this interpretation, then the longer and the shorter haul clause applies to such rates as may be made by a common carrier having one line, or a common carrier operating continuous lines but still under one management, or control, as defined by the First Section of the Act, and not to several carriers under different managements, but engaged in the transportation of Inter-State traffic by a system of joint rates.

The first section prescribes:

*That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property*

*wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country; provided, however, that the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory, as aforesaid.*

*The term "railroad," as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage. All charges made for any service rendered, or to be rendered, in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.*

The Commission will notice that after the words "or from any place in the United States to a foreign country, etc.," there is a stop, and after the disjunctive there is a distinct kind of traffic provided for. The first part of the section provides for the passenger and property traffic between States and Territories. The other portion provides for traffic to and from foreign countries. The property which comes from or goes to a foreign country is stamped with the character of the traffic which is controlled by this bill. The traffic which comes from or goes to different States is not stamped with this character if it is received by an independent common carrier in a State and transported to its destination in the same State.

To illustrate now this idea with regard to the Savannah, Florida & Western Railroad: At Savannah we do business with the Ocean Steamship Company, and we do business with the Charleston & Savannah Railroad. The Charleston & Savannah

Railroad in turn does business with the Atlantic Coast Line. The Atlantic Coast Line in turn does business with the Pennsylvania Railroad. The Savannah, Florida & Western commences in Georgia, at Savannah. There is no restriction in the Act upon the receipt of its freight whether it should be from a merchant or another common carrier. It receives freight from the Charleston & Savannah Railroad in Georgia, and it receives it from the Ocean Steamship Company in Georgia. It handles it in Georgia. It transports it then from Savannah to Thomasville, Bainbridge, Albany and other stations in Georgia and in Florida. Under the construction which I claim for the Act, the traffic from Savannah, after it is received by the Savannah, Florida & Western Railroad, is not subject to the provisions of the Inter-State Commerce Bill if it is handled, received and delivered in Georgia. If it is handled and received in Georgia but delivered in Florida, then it does become subject to those provisions.

In further illustration, we do business at Albany, and at Albany the Savannah, Florida & Western Road connects with the Central Railroad, and that system connects with the Louisville & Nashville and other roads leading to the west and northwest. The freight comes to Albany, and if that freight is to go from Albany, it is delivered to the Savannah, Florida & Western Railway Company for further transportation. Now the Savannah, Florida & Western Road is not a part of any continuous line. It is not operated nor is it managed by any other systems. It has joint rates with other lines.

This property is received at Albany, and if it is transported to any point in Georgia, then the carriage by the Savannah, Florida & Western Railway Company is not affected by the Inter-State Commerce Bill. But if it is transported to Florida it is affected. Therefore, if I am right in this construction, the principal part of the business which this road does, being the receipt and delivery of this commerce in the State of Georgia, is not affected by the Act, and it would only ask to be relieved from the operation of the 4th Section on its business received or delivered in the State of Florida, at its terminal and junctional points.

Many of the petitioners, whose cases are under investigation, however, differ with me in this interpretation of the law, and

think that the words "aggregate compensation" refer to an aggregate of joint rates; and that the 4th Section applies as well to continuous lines under separate and different managements working under joint rates as well as to a single or consolidated line under the same management or control. This construction would of course affect the traffic from other States to every station on the Charleston & Savannah Railway, and the Savannah, Florida & Western Railway, notwithstanding the fact that the traffic may have been received, delivered and handled by said companies wholly within one State.

But whatever construction is placed upon the fourth section it is necessary to ask for some relief. And this brings me to the consideration of the power given to the Commission. It is granted in the following proviso to the 4th section :

*Provided, however, that upon application to the commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the commission may from time to time prescribe the extent to which said designated common carrier may be relieved from the operation of this section of this Act.*

The discretion conferred is unlimited. The commission is certainly empowered to permit a common carrier to charge a greater compensation in the aggregate for the transportation of passengers or of the like kind of property when the circumstances and conditions are dissimilar. The Court would grant relief in such cases and the discretion of the commission is concurrent with that of the Court. The commission I believe have much more power than the Courts in such cases; after an investigation they may in any case authorize a common carrier to charge less for longer than for shorter distances for the transportation of passengers or property. The intention of the law-makers was to make the Act elastic. When the conditions and circumstances of the transportation are not substantially similar the carrier has a right under the law to charge less for a longer than for a shorter distance; but as cases might arise which had not been provided for, and where the enforcement of the law would create distress either to the carrier or to communities, the power to authorize a less charge for longer than for shorter distances was made unlim-

ited. In construing discretionary powers the general rule, it is true, is that the exercise of the power shall not be reckless, but conservative and legal. Apply this rule to the law and the cases under investigation, and it seems to me that the Commission could well grant the prayers of the petitions.

Section 1 of the Act prescribes that the rates shall be just and reasonable. These are legal terms. They have been construed by the Courts of England and this country and held to be rates which are not excessive. A rate is not unjust and unreasonable because the carrier has made a discrimination. At common law a carrier could charge A one dollar, B fifty cents and C nothing for a like and contemporaneous service, and the charge to A would not be unjust and unreasonable unless it was too great. Discriminations were prohibited in England by Acts of Parliament and in this country by statutes. Sections 2, 3 and 4 of this Act regulate discriminations. Section 2 deals altogether with discriminations in charges made to persons for a like and contemporaneous service. Section 3 relates to undue and unreasonable preferences or advantages and to undue and unreasonable prejudices or disadvantages. And Section 4 refers solely to the practice of charging a greater compensation for a shorter than a longer distance.

The key-note of the whole Act is that the rate shall be just and reasonable. The Commission have full power to authorize a common carrier to charge less for longer than for shorter distances, provided the charge for the shorter distance is not unjust and unreasonable, that is, not excessive, and provided further, the granting of the authority would not be a violation of either Sections Two or Three. Section Two could not be violated, for the reason that it refers entirely to charges for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions. It could then apply to traffic only between the same places, while Section 4 relates altogether to traffic between places on the same lines where one is more distant from the starting point than the other.

And I contend that granting the prayers of the petitioners would not be a violation of Section Three, but that a refusal in



most cases would operate against the spirit of that section. For years most of the railway companies south of the Ohio and Potomac rivers have been members of an association called the Southern Railway & Steamship Association which has made the rates for all the lines. The system adopted by them was the best they could formulate, and has been fully explained to the Commission. The principle of recognizing competitive and non-competitive points may not be in accord with the Inter-State Commerce Act, but the principle was considered right at the time the system was created. It is now recognized in Georgia, as appears by Rule 6 of the Georgia Railroad Commission which has been introduced in evidence during the progress of the hearing.

Under the system trade centres have grown and the people have spent money in building railroads to their respective cities to obtain the benefit of lower and competitive rates. These people have united with the railroads and ask you to authorize the charge of a less rate to these points than to intermediate stations. The intermediate or non-competitive stations on the other side have appeared in some instances and opposed the petitions and asked for a strict enforcement of the law. These non-competitive places have been content in the past to sleep whilst their neighbors were building railways and pushing forward their stations to be towns and their towns to be cities. The opponents ask now to have these places deprived of the advantages which they have acquired and that the non-competitive places should receive the fruits of enterprises in which they never engaged and for which they never paid. Would not a refusal of the prayer of the petitioners result in giving an unreasonable preference or advantage to these non-competitive places, and would it not further result in subjecting these trade centers and competitive places to an undue and unreasonable prejudice or disadvantage in the present state of their prosperity? It seems to me that a refusal to continue of force the order of April 6th in its principal features, would produce a financial revolution and seriously disturb the fixed channels of trade to the prejudice and disadvantage of those places which by their money and enterprise have become competitive points.

The terms under substantially similar circumstances and conditions are words of very broad import. No purely local shipment is ever made under substantially similar circumstances and conditions with a like through shipment. As a general rule cars run through to terminal points, and the cost of transporting a shipment to a through is no greater than to a local point, with the difference against the local on account of the stopping and unloading and the waste of labor which cannot be constantly employed at many local points, although engaged and paid by the day or month. Nor are the circumstances and conditions of the transportation substantially similar to competitive and con-competitive points. The shorter line will make the rate and the longer must conform or withdraw from business, and if the longer conforms it must correspondingly reduce rates to the intermediate stations which may be already too low. And when this competition is with a water line or a line part water and part rail, unless the rail line is authorized to charge the same rates to points reached by the water or water and rail lines, it must retire from the competitive business to its own serious disadvantage as well as to the prejudice of the point thus deprived of competition. The water lines in many instances have no intermediate stations, they sail without stopping from port to port, and if under the jurisdiction of the Commission cannot be controlled in rates as they have no longer and shorter distances.

There are many circumstances and conditions surrounding the transportation of Inter-State traffic on the Charleston & Savannah and the Savannah, Florida & Western Railways which are peculiar to those companies. They compete with steamships and sailing vessels directly at Charleston, Savannah and Jacksonville, and with steamships, sailing vessels and short lines of railroads at Yemassee in South Carolina, at Jesup, Waycross and Albany in Georgia, and at Callahan, Live Oak, Lake City, Gainesville and Chattahoochee in Florida, and at Bainbridge, in the State of Georgia, with steamboats on the Apalachicola, Chattahoochee and Flint Rivers, running in connection with the Florida Railway & Navigation Company and the Central Railroad & Banking Company, and the ocean lines from Jacksonville, Fernandina, Brunswick and Savannah. To meet this competition by water and by

water and rail, I ask the Commission to authorize the Charleston & Savannah and the Savannah, Florida & Western Railways to charge less to and from the above named points than to and from intermediate stations. And to that end I ask that the names of those companies and of the above named places, which are either terminal or junctional points on said railways, be added to the order of April 6, and be included in any additional order extending the whole or any portion of the same, or that such other relief from the operation of the said Fourth Section may be granted to them in the premises and to the extent that may seem equitable and just to the Commission.

We do not ask for authority to charge higher rates than are just and reasonable for our shorter distances, but to charge less for these specified longer hauls to enable us to participate in a business which we would otherwise lose, and the loss of which would deprive us in a great measure of the ability to continue our present just and reasonable rates to other stations and places. The prayer of our petition is, not that we may be permitted to undercharge the water lines, but to meet them in such a manner that we may enjoy a part of the business without being forced to reduce our just and reasonable rates between intermediate stations. Granting this authority to these rail lines to compete will not deprive Charleston, Savannah, Brunswick, Fernandina and Jacksonville of their fine water lines, but it will cause those water lines to maintain lower rates than if relieved of rail competition by an enforcement without exceptions of the Fourth Section, and it will insure to the agricultural interest of the States of Florida, Georgia and South Carolina the present system of rapid transportation to the markets of the North of the perishable fruit and vegetable products of those States.

The **CHAIRMAN**: We have been accustomed to ask those who request orders of us to draft the order that they think themselves entitled to upon their petition and present it for our examination in the light of the facts.

Commissioner **WALKER**: I think the papers we have here will answer.







---

BEFORE THE HONORABLE INTER-STATE COMMERCE COMMISSION

---

IN RE.

LOUISVILLE & NASHVILLE RAILROAD CO

---

Application for Relief from the Fourth Section of the  
Act of Congress to Regulate Commerce.

---

ED. BAXTER,  
OF COUNSEL FOR THE APPLICANT.

---

“Under substantially similar circumstances and conditions.”

---

MARSHALL & BRUCE, ATTORNEYS, NASHVILLE.





# ARGUMENT.

---

*To the Honorable Interstate Commerce Commission :*

## I.

The applicant, the Louisville & Nashville Railroad Company, has filed its petition, praying to be relieved from the operation of the fourth section of the act of Congress "to regulate commerce," so as to be authorized to charge less for longer than for shorter distances for the transportation of property between Cincinnati, Louisville, Evansville, St. Louis, Memphis, Nashville, New Orleans, Mobile, Selma, and Montgomery, and various other cities situated upon or reached by its lines of railway, and between which cities there exists active competition between the applicant and various other transportation lines. Between most of the cities mentioned in the prayer of the petition there is competition by water as well as by rail, but between some of the cities there is competition only by rail.

The object of the applicant is to be released and left free to meet such competition as may prevail at any of the points mentioned in the prayer of the petition, by accepting such rates as the applicant may be able to obtain at such competitive points, without being forced to reduce its local rates at intermediate points where no such competition exists.

The applicant has no desire to make its local or non-competitive rates extortionate or unreasonable. On the contrary, the petition avers that though the local or non-competitive rates of the applicant have been changed from time to time in the past, such changes have in all

cases been reductions, so that the average of such rates is now much less than it formerly was; the reductions in some instances having amounted to as much as fifty per cent.

The petition further avers that all such rates are and have been just and reasonable.

It is averred in the petition that not less than eighty per cent. of the net earnings accruing to the applicant from the transportation of property, is derived from property which is moved to and from local or non-competitive stations; that if the applicant is forced to abandon either its competitive or its local traffic, self-preservation will force it to abandon the competitive traffic from which so small a proportion of its net revenue is derived; that the forced abandonment of its competitive traffic will inflict a loss upon the applicant of over three millions of dollars per year, and that the cities between which such competitive traffic has heretofore existed, will be injured to a corresponding extent by the loss of the applicant's competition.

The applicant submitted with its petition its tariffs of rates, and the petition concedes that in many instances the rates of transportation charged by the applicant for the shorter distance, are greater than for the longer distance, over the same line in the same direction, though the shorter is included within the longer distance. But the petition avers that such is the case only where competition has forced such an adjustment, and in all of the instances except two, the competition is by water as well as by rail. The applicant insists that where such competition exists, the transportation is not conducted under substantially similar circumstances and conditions as where no such competition does exist. The applicant therefore submits that its present tariffs com-

ply fully with the spirit as well as the letter of the fourth section of the act to regulate commerce; and the applicant would not have presented a petition to be relieved from the operation of that section, had it not been for the fact that all of the railroad companies north of the Ohio River notified the applicant, in effect, that they would, on April 5th, withdraw all through rates from the applicant's lines, unless the applicant would agree to reduce its local, to its competitive rates, which, for the reasons above stated, the applicant was unable to do.

The applicant therefore was compelled to appeal to this Honorable Commission to be relieved from the operation of said section, so far as the same relates to the transportation of property between competitive points, notwithstanding the applicant did not then believe, and does not now believe, that its tariffs violate the provisions of that section.

If the applicant is correct in its construction of the fourth section, it recognizes the fact that it will be necessary for the Commission to dismiss the applicants' petition. But if the Commission shall place the dismissal of the petition upon that ground, the applicant will not feel that its petition has been filed altogether in vain.

In the matter of the application made by certain railroad companies in relation to the export trade of Boston, the Commission used this language: "Indeed any legal ground for affirmative action on the part of the Commission is precluded, when those who bring the practice to its attention, do so with explanations of its propriety, and insisting upon its lawfulness." (1st Interstate Commerce Reports, p. 27.)

The course taken by the Commission in that case was to decline to make any order on the petitions, except that the petitioners should have leave to withdraw them.

If the Commission should be of the opinion that competition does not create a substantial dissimilarity in the circumstances and conditions under which transportation is conducted, and therefore that the applicant's tariffs are technically violative of the fourth section, then the question will remain whether there are any other facts presented by the applicant, which will justify the Commission in relieving the applicant from the operation of that section.

My argument will necessarily divide itself into a consideration of those two questions.

## II.

The fourth section of the act of Congress "to regulate commerce" provides: "That it shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation, in the aggregate, for the transportation of passengers, or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance." (See Appendix, 45.)

The ninetieth section of the English "Railways Clauses, Consolidation Act of 1845" authorized railway companies to vary the tolls upon their railways "so as to accommodate them to the circumstances of the traffic:" but it was provided that such power of varying tolls should not be used for the purpose of "prejudicing or favoring particular parties, nor for the purpose of collusively and unlawfully creating a monopoly, either in the hands of the company or of particular parties." The companies were therefore authorized to vary their tolls upon the whole, or upon any particular por-

tions of the railway, as they should think fit, provided "that all such tolls be at all times charged equally, to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway, under the same circumstances; and no reduction or advance in any such toll shall be made, either directly or indirectly, in favor of, or against any, particular company or person traveling upon or using the railway." (4 R'y and Canal Traffic Cases, p. 445.)

It is said that the words, "under substantially similar circumstances and conditions," contained in the act of Congress, were intended to have the same meaning as the words "under the same circumstances," contained in the English act; and that the construction which the English courts have placed upon the words "under the same circumstances," or "under like circumstances," ought to be followed by the courts of this country in construing the fourth section of the act of Congress.

The rule, as stated by the United States Supreme Court upon this subject, is, "that where English statutes, such, for instance, as the statute of frauds and the statute of limitations, have been adopted into our own legislation, the known and settled construction of those statutes, by courts of law, has been considered as silently incorporated into the acts, or has been received with all the weight of authority. (See 110 U. S., 628, *McDonald vs. Hovey*.)

It, therefore, becomes important to see whether there has been any "known and settled" construction of the English statutes by the courts of that country, and if so, what that construction has been; and as an aid in un-

derstanding the decisions of the English courts upon those statutes, it will be necessary to see what the common law of England was, as understood and defined by those courts.

In *Baxendale vs. E. C. R'y*, 4 C. B. N. S., 93, E. C. L. (pages 78, 79), decided February 11th, 1858, Byles, Judge, said: "I know of no common law reason why a carrier may not charge less than what is reasonable to one person, or even carry for him free of all charge."

In *Branley vs. S. E. R'y Co.*, 12 C. B. N. S., 104, E. C. L. (pages 74, 75), decided May 12th, 1862, Willes, Judge, said that the obligation of a carrier at common law is "to charge reasonably, but not to charge equally."

The case of *G. W. R'y Co. vs. Sutton*, L. R. 4th, H. L. (English and Irish Appeals), page 226, was decided July 13th, 1869. Mr. Justice Blackburn said (page 237): "At common law a person holding himself out as a common carrier *was not under any obligation to treat all customers equally*. The obligation which the common law imposed upon him, was to accept and carry all goods delivered to him for carriage according to his profession, (unless he had some reasonable excuse for not doing so), on being paid a *reasonable* compensation for so doing. \* \* \* The fact that the carrier charged others less, though it was evidence to show that [a higher] charge was unreasonable, was no more than evidence tending that way. *There was nothing in the common law to hinder a carrier from carrying for favored individuals at an unreasonably low rate, or even gratis*; all that the law required was that he should not charge any more than was reasonable.

"But when railways came into operation, and it was found that they practically superseded all other modes of transit, it became a question for the Legislature how

far they would, when granting numerous persons power to make a railway and act as carriers on that line, impose on them *restrictions beyond what the common law imposed on ordinary carriers.*

“At first the Legislature, in each special act, inserted such clauses as seemed to the particular committees reasonable in each case. Very soon those came to be usual clauses, which the then Chairman of Committees of the House of Lords used to require to be inserted in all railway bills with more or less modification. They were known by his name as Lord Shaftesbury’s clauses. Finally, in 1845, the Legislature embodied in a general act (8 and 9 Vict., C. 20), those clauses which it was thought expedient should generally be inserted in railway acts, and the act was known as the Railways Clauses, Consolidation Act of 1845.”

### III.

The first thing to be understood in approaching the consideration of the English railway statutes, is that Parliament was not actuated by any communistic designs upon the railway interests of the realm. It was not intended to confiscate the railways, nor to take the management of them away from the companies, nor to compel the companies to work for the public for nothing. On the contrary, Parliament intended that the companies should retain the possession and management of their railways, *and should operate them for the benefit and in the interest of the share-holders*, and for that purpose, that the companies should be allowed to make all necessary contracts and arrangements in regard to rates and tolls, provided they acted with perfect impartiality and fairness, between all persons seeking to use the railways for traffic.

The *sole* object of the statutes was to prevent railway companies from "prejudicing and favoring particular parties," and to require them to charge "equally to all persons" where the service was rendered "under the same circumstances."

In *Parker vs. G. W. R'y Co.*, 3 Eng. R'y and Canal Cases, page 599, Tindal, Chief Justice, said: "From these several enactments, it appears clearly to have been the intention of the Legislature, that parties incorporated should be empowered to construct the railway, *and hold it as their property, and derive certain profits from it*, but that every member of the community should have *an equal right* to use it on the terms prescribed by the act; and that the payment to be made for such user, whether under the denomination of rates or tolls, or charges fixed by the company, should be reasonable and *equal to all persons*, without reference to the particular advantage derived by any individual, or class of individuals, from such user."

In *The Attorney-General vs. B. & D. J. R'y Co.*, 2 Eng. R'y and Canal Cases, pages 132-133, the Lord Chancellor said that the object of the Legislature was to prevent "those who should get the monopoly of the carriage of the public from exercising that monopoly to the prejudice of individuals; that is to say, they shall not be at liberty to carry the goods of one manufacturer and refuse the goods of another. It was to give an *equal right* to the public to the convenience, \* \* \* \* *and not to prevent the company from making such arrangements within the powers of their act as they might find most convenient to themselves.*"

In the case of *Nicholson et al. vs. G. W. R'y Co.*, 1st Nev. & Mac., 148, 149, Earle, Chief Justice, said: "I take the free power of making contracts to be essential



to commercial profit. *Railway companies have that power as free as any merchants*, subject only (as to this court) to the duty of *acting impartially without respect of persons*; and this duty is performed when the offer is made to all who wish to adopt it. Large contracts may be beyond the means of small capitalists; contracts for long distances may be beyond the needs of those whose traffic is confined to a home district; *but the power of the railway company to contract is not restricted by these considerations.*"

In the case of *West vs. L. & N. W. R'y Co.*, 1st Nev. & Mac., 172, Chief Justice Bovill said: "The Legislature has placed a restriction upon the companies from using their powers and their railways *for the benefit of one person to the exclusion of others*, and has required *that all persons shall be treated alike*. At the same time it has been considered that due regard may be had to all peculiar circumstances, as well as to the safety and convenience of the public, and the *fair interests of the companies themselves.*"

In the case of *Ransome vs. E. C. R'y Co.*, 1st Nev. & Mac., 70, the Court said: "After a good deal of consideration we think that *the fair interests of the railway ought to be taken into account.*"

In the matter of the petition of the Order of Railway Conductors, this Commission used the following language: "Throughout the act [of Congress] as it now stands, in confessedly experimental form, there is exhibited an obvious and a generous purpose *to allow to the corporations ample scope in the conduct of their business as common carriers for the people, and fair consideration of every reasonable claim* while insisting upon just, *impartial*, open, and consistent rates of charge *to which every citizen shall be subject alike whose situation*

*is the same.*" (See First Interstate Commerce Reports, p. 20.)

As illustrations of what is meant by the English courts in saying that they will allow the fair interests of railway companies to be taken into account, the English Railway Commissioners in the case of *N. & L. Coal Co. vs. Caledonian R'y Co.*, 2 Nev. & Mac., p. 39, decided in October, 1874, use this language on p. 46: "We think it will be right to guard against precluding the railway company *if it costs them more*, all things considered, to carry over the one line than the other from making a proportionate difference in the mileage rates."

In the case of *Bellsdyke Coal Co. vs. N. B. R'y Co.*, 2 Nev. & Mac., p. 110, decided in 1875, the English Commissioners said "that a railway company pays no more than a due regard to its own interests, if it charges for its services *in proportion* to their *necessary cost*, and has only such variety in its rates *as there is in the circumstances of its customers.*"

In the case of *Nicholson et al. vs. G. W. R'y Co.*, 1st Nev. & Mac., p. 142, decided in 1858, it was held that the English act "was not contravened by a railway company carrying at a lower rate in consideration of a guarantee of large quantities and full train loads at regular periods, provided, that the real object of the railway company be *to obtain thereby a greater remunerative profit by the diminished cost of carriage*; although the effect may be to exclude from the lower rate those persons who cannot give such a guarantee."

And to the same effect was the decision of the English Commissioners in the case of *Greenop et al. vs. S. E. R'y Co.*, 2 Nev. & Mac., p. 319, decided in 1876. See also *Ransome vs. E. C. R'y Co.*, 1st Nev. & Mac., 158.

In the case of *Oxlade vs. N. E. R'y Co.*, 1st Nev. & Mac., p. 94, decided in 1857, the Court said: "Other special circumstances are stated in the arguments, which, *had they effected the pecuniary interests of the company*, might have furnished ground for contending that the preference was not undue or unreasonable."

And in *Lees vs. L. & Y. R'y Co.*, 1st Nev. & Mac., 352, decided in 1874, the English Commissioners held that "in determining whether a preference shown by a railway company to one of its customers is undue or unreasonable within the meaning of the Railway and Canal Traffic Act of 1854, regard should be had to the benefit and convenience of the public, and also *to the convenience of the railway company with reference to its general traffic.*"

If in considering the circumstances and conditions under which railway transportation is conducted, it is legitimate to regard "the fair interests" of the railway companies; "if their general pecuniary interests" are to be consulted; and if their "convenience with reference to their general traffic" is to be taken into account; then, if it can be shown that the pecuniary interests of the company will be subserved, and that the convenience of their general traffic will be promoted, by allowing them to compete for business at competitive points on the best terms that such business can be obtained, I submit that the cases above cited, are, at least, indirect authorities for the position that competition upon such terms was never intended to be prohibited either by the English statutes or by the act of Congress.

I agree that where competitive business is taken at less than its actual cost, so that the pecuniary interests of the railway companies, instead of being promoted are injured, such competition ought not to be permitted. But if it can be shown that competitive traffic, though

carried at less than the average cost of the entire traffic of a company, can yet be carried above its own actual cost, then the pecuniary interests of the company will be subserved, at least to some extent, by permitting the competition; and if such competitive rates are allowed equally to every one shipping to or from such competitive points, no injustice whatever is done to any one.

#### IV.

I am not forced, however, to rely upon indirect authorities for the position assumed by the applicant in this case. The precise contention of the applicant is that transportation conducted between competitive points is not conducted under substantially similar circumstances and conditions with traffic conducted between points that are not competitive, and therefore that the fourth section of the act of Congress to regulate commerce does not apply.

The *Attorney-General vs. B. & D. J. R'y Co.*, 2 Eng. R'y. & Canal Cases (page 124), was decided August 8th, 1840. The B. & D. J. R'y act empowered that company to receive from passengers conveyed by the company's carriages, tolls, not exceeding a specified amount. By a subsequent act it was provided that the charges by the first act, authorized to be made for the carriage of passengers, goods, etc., "shall be at all times charged equally, and after the same rate per ton per mile, in respect of all passengers and goods of a like description, and conveyed or propelled by a like carriage or engine passing on the same portion of the line only, *and under the same circumstances,*" etc.

The B. & D. J. R'y, commencing at Derby, intersected the L. & B. R'y at Hampton-in-Arden. Afterwards the M. C. R'y was built from Derby to an inter-

section with the L. & B. R'y at Rugby. There were then two competitive routes from Derby to London, and the new route opened by the M. C. R'y was the shortest. In order to meet that competition, the B. & D. J. R'y Co. charged through passengers who were traveling between the competitive points—Derby and London—at the rate of two shillings between Derby and Hampton-in-Arden, while they charged local passengers who were only traveling between the non-competitive points—Derby and Hampton-in-Arden—at the rate of eight shillings between those points.

The Attorney-General filed a bill against the B. & D. J. R'y Co., charging that said company had fixed the aforesaid unequal charges, since the opening of the M. C. R'y, *"in order to induce passengers, goods, and merchandise to be conveyed to Derby by way of their railway; and for that purpose have made a reduction in the charge for conveyance by them, in favor of persons traveling upon the railway between Hampton-in-Arden and Derby, who are proceeding from or to London along the L. & B. R'y, and who would otherwise travel by the M. C. R'y, although such persons travel upon and use the railway between Hampton-in-Arden and Derby under the same circumstances with persons in favor of whom no such deduction is made."* (Page 129.)

The bill prayed (page 130) "that it may be declared that the charges made by the B. D. & J. R'y company for the carriage of passengers, goods, wares, and merchandise conveyed by the company, and passing on the line of the railway for the whole distance between Hampton-in-Arden and Derby by the same or like trains, propelled by the same or the like carriages, ought to be charged equally and after the same rate, whether such passengers, goods, merchandise, etc., proceed on, or are

conveyed along the L. & B. Railway for the whole distance from or to London or not, \* \* \* and that the company be restrained from charging lower rates in respect of such passengers, goods, and merchandise as pass along the L. & B. Railway for the whole distance between London and Hampton-in-Arden, than the rates charged by said company, in respect of such passengers, goods, and merchandise as do not pass along the B. D. & J. Railway at all, or so pass for a distance short of the whole distance between London and Hampton-in-Arden."

The Lord Chancellor dismissed the motion with costs, saying, "it is not denied that they (the company) carry those who are going (from Derby) to Hampton-in-Arden at the charge which they are authorized to make, *but persons traveling under other circumstances*, not intending to stop there, but going on to London, are, according to the Attorney-General's complaint, charged two shillings instead of eight shillings. Now, I do not know who will suffer by that arrangement, whatever may be the cause of it. \* \* \* The Attorney-General now asks me to interfere to prevent the company carrying passengers (between competitive points) at too low a rate. \* \* \* It is not necessary to say anything about the jurisdiction of the Court, or how far I should interfere if I had the power, because I am quite clear *that the sixty-third section has not the slightest reference to this case.*" (Page 132.)

It will be remembered that the sixty-third section required that all passengers, etc., should be charged equally, etc., passing on the same portion of the line, etc., "*and under the same circumstances*" (p. 127), and his lordship held that said section had no reference to the case before him, *because persons traveling between compet-*

*itive points were not traveling "under the same circumstances" as local passengers traveling between non-competitive points, notwithstanding both classes of passengers traveled over the same portion of the railway, propelled by the same engines, and in the same cars.*

The English Railway and Canal Traffic Act of 1854 provided that no railway company "shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person, \* \* \* nor subject any person "to any undue or unreasonable prejudice or disadvantage in any respect whatever." (1 Nev. & Mac., p. 2.)

Hozier filed a petition against the Caledonian R'y Co., alleging that he was aggrieved by being charged nine shillings six pence for traveling between Motherwell and Edinburgh, a distance of forty-three miles, while passengers traveling in the same train, and in the same class of carriage between Glasgow and Edinburgh, a distance of fifty-nine miles, were charged only two shillings. (1 Nev. & Mac., p. 28.)

It was alleged by the defendant that the petitioner was a large stockholder in a rival railway, which competed with the defendant between Glasgow and Edinburgh, and that the real object of his petition was to put a stop to the competition of defendant between those points. (1 Nev. & Mac., p. 29.)

The petition was dismissed January 20, 1855.

Lord Curriehill said: "The only case stated in the petition, is that passengers passing from Glasgow to Edinburgh, or from Edinburgh to Glasgow, are carried at a cheaper rate (aggregate) than passengers from Motherwell to either of these places. Now, that is an advantage, no doubt, to those passengers traveling between Edinburgh and Glasgow. But is it an *unfair* ad-

vantage over other passengers traveling between intermediate stations? The complainer must satisfy us that there is something *unfair* or *unreasonable* in what he complains of, in order to warrant any interference. Now I have read the statement in the petition, and I have listened to the argument in support of it, to find what is *unreasonable* in giving that advantage to through passengers. What disadvantage do Motherwell passengers suffer by this? I think that no answer was given to this, except that there was none." 1. Nev. & Mac., pages 31, 32, *Hozier vs. Caledonian R'y Co.*

This case also, certainly decides that to charge local passengers a greater compensation in the aggregate for a shorter distance than is charged through passengers for a longer distance between competitive points, does not subject the local passengers "to any *undue* or *unreasonable* prejudice or disadvantage in any respect whatever," notwithstanding the passengers, through as well as local, may travel over the same line, in the same direction, in the same trains, and in the same class of carriages.

In *Jones vs. E. C. R'y Co.*, 1 Nev. & Mac., 45, it appeared that defendant charged 45 pounds per year for season tickets from Colchester to London, a distance of twenty miles, while it charged for such tickets only 20 pounds per year from Harwich to London, a distance of over seventy miles. It was insisted that this was an undue preference of the inhabitants of Harwich over those of Colchester.

The Court (on January 27, 1858) refused the rule. Williams, Judge, said: "For anything that appears, *there may be very good reasons for making such difference in the price.* \* \* \* At this moment *there is active competition at Reading between the Great Western and*



*Southwestern Railways*; the consequence is, that considerably less is charged for tickets from that place to London, and vice versa, than for intermediate stations. There is no such reason for the difference here, for there is but one line to Harwich, and consequently no competition."

This case also, decides that to charge local passengers a greater compensation in the aggregate for a shorter distance than is charged through passengers for a longer distance between competitive points, does not subject the local passengers "to any *undue* or *unreasonable* prejudice in any respect whatever," notwithstanding the passengers, through as well as local, may travel over the same line, in the same trains, and in the same direction.

It further decides that the fact that active competition exists at the points between which the through passengers are carried, affords "*a very good reason for making a difference*" between the rates charged such through passengers, and the rates charged local passengers at points where no competition exists. (1 Nev. & Mac., 46.)

And I submit that if competition affords a good reason for making a difference between through and local rates, it cannot be maintained that the transportation of local passengers is done "under substantially similar circumstances and conditions" with the transportation of through passengers, when competition forces the company to make the lower through rate.

The case of *Napier vs. G. & S.W. R'y Co.*, 1 Nev. & Mac., 292, was decided June 19th, 1859. The defendant operated a railway from Glasgow to Ardrossan, on the sea coast, and endeavored to build up a trade between Glasgow and Belfast, via Ardrossan, in competi-

tion with certain steam vessels which carried direct from Glasg  w to Belfast without any trans-shipment whatever. With a view to foster and encourage this competitive through trade between Glasgow and Belfast, the defendant made an arrangement with the owner of a vessel called the "Oscar," by which the Oscar was to ply between Ardr  ssan and Belfast in connection with defendant's trains. Through tickets and through bills of lading were issued between Glasgow and Belfast, via Ardr  ssan, and the through rates were divided between the defendant and the owner of the "Oscar" in certain proportions, the defendant's proportion of the through rate, covering the distance from Glasgow to Ardr  ssan, being much less than the local rates charged by the defendant between those points. *In fact, said local rates were in some instances much higher than the entire through rates.* (Page 295.) The plaintiff was the owner of a vessel called the "Lancefield," which also plied between Ardr  ssan and Belfast, and he complained that the defendant refused to sell through tickets or issue through bills of lading by his vessel, and refused to prorate with him on through rates. On the contrary, *the defendant charged its full local rates between Glasgow and Ardr  ssan on all freights and passengers carried by the plaintiff's vessel between Ardr  ssan and Belfast, and the plaintiff* prayed that the defendant be required to make the same arrangement with him that existed with the owner of the "Oscar," or that defendant be restrained from continuing the arrangement with the latter.

The Court refused the relief sought principally upon the ground that the English Railway and Canal Traffic Act of 1854 did not apply to deep-sea traffic; but aside from that consideration, the Court held that the plaintiff had no case at all.

It was impossible for the defendant to build up a competitive business between Glasgow and Belfast unless it could make some reliable and permanent arrangement for the sea transfer between Ardrossan and Belfast, and to make such an arrangement special inducements had to be offered to the owner of some vessel, as there was not traffic enough for more than one vessel. If plaintiff had the right to demand that the same facilities be afforded him as were afforded to the "Oscar," the owners of all other vessels would have a similar right; and if they all had that right, the transfer business would be divided among so many vessels, that it would not be profitable to any of them, and none of them could be relied upon to continue in it. In order to preserve to the public the benefit of the competition afforded by defendant's route between Glasgow and Ardrossan it was absolutely necessary to refuse the plaintiff's application, *though the inevitable consequence was to compel the plaintiff or his customers to pay local rates between Glasgow and Ardrossan, which, as before stated, were in all instances, higher than defendant's proportion of the through rate covering the distance between those points; and in some instances much higher than the entire through rate from Glasgow to Belfast.*

In the case of *E. & W. J. R'y Co. vs. G. W. R'y Co.*, 1 Nev. & Mac., p. 346, decided May 12, 1874, the English Railway Commissioners use this language: "There can be little doubt *that through rates generally, are a convenience to the public*, and that the public are interested in having a through rate for this particular traffic. But it must not be overlooked *that through rates are in amount greatly below the sum of the local rates*, and rest upon the supposition that the traffic to which they apply is worked as economically as possible."

The case of *Foreman vs. G. E. R'y Co.*, 2 Nev. & Mac.,

202, was decided in July, 1875. The following facts are extracted from the opinion of the English Commissioners: "The applicants in this case are coal merchants at Great Yarmouth, and complain that the coal rates of the Great Eastern Company to various places on their lines, as, for example, to Norwich, are very much higher in proportion to distance from Yarmouth than from Petersborough. The coal the applicants deal in is brought to Yarmouth by sea, and is thence sent inland by rail; but being an expensive coal, the railway is used only to carry it to places near. To these places coal is also brought from Petersborough, *and this coal competes successfully with sea-borne coal*, and its ability in this respect is attributed by the complainants to the practice of the railway company *in their opposition to their* (complainant's) *carriage of coal by ship, and their* (the company's) *efforts to attract it to themselves*, of charging *much less in proportion for long distances than for short ones.*" (2 Nev. & Mac., pp. 204, 205.)

The Commissioners, after examining the scale of rates charged by the company, said that "as to their comparative amounts for the different mileages, it does not appear that there is a greater disproportion in relation to distance in these charges than in the cost of carriage to the company, and if the principle on which the scale is graduated, is a fair consideration of the cost to the company, of carrying coal for the different distances, it is not a valid objection to the scale that it is better adapted to the business of some merchants than of others, *and that its low rates for long distances are useless to those who deal in the over-sea coal; NOR DOES THE TRAFFIC ACT PREVENT A RAILWAY COMPANY FROM HAVING SPECIAL RATES OF CHARGE TO A TERMINUS TO WHICH TRAFFIC CAN BE CARRIED BY OTHER ROUTES OR OTHER MODES OF CARRIAGE WITH WHICH THEIRS IS IN COMPETITION.*" (2 Nev. & Mac., 205, 206.)

The case of *W. & B. Canal Co. et al. vs. B. Canal Co.*, 3 Nev. & Mac., 113, was decided in November, 1877. The applicants and defendants were severally proprietors of canals, which formed links in a continuous chain of inland navigation between South Staffordshire and the river Severn on the one hand, and London and the river Thames on the other.

The applicants were the proprietors of two of said canals, and they alleged that the several canals formed valuable routes in the interest of the public for traffic between those extreme points, and also between intermediate places, *and that in order to enable the canals as routes to compete with the railway system it was necessary that there should be through rates for traffic passing through said canals, and as the sum of the local rates charged on the several canals was too high to allow of competition with the railways*, the applicants asked the commissioners, under the English Act for the Regulation of Railways passed in 1873, to fix through rates for the canal traffic, which, of course, were to be less than the sum of the canal local rates. (See pp. 114, 115).

In other words, the applicant canal companies were doing in that case what the Louisville & Nashville R. R. Co. is asking to be allowed to do here—viz., to make their through rates between competitive points less than their local, wherever necessary to enable them to compete. One difference between the two cases is, that in that case, the water route was struggling to compete with the railways, and in our case the railways are struggling to compete with the water route; and another difference is, that, in that case, the applicant canal companies were asking the English Railway Commissioners to compel the defendant canal companies to adopt through rates lower than their locals, so as to make competition practicable, while in this case the L. & N. R. Co. is

asking the U. S. Commissioners for permission to charge the low through rates which water competition has itself forced upon it.

In the case cited one of the defendants, the Birmingham Canal Co., objected to the application upon the ground that as its proportion of the through rates would be less than its local rates, and as its special act contained what is known in England as the "equality clause," the acceptance of its proportion of the through rates would compel it to reduce its local rates to correspond. But the commissioners replied (p. 120) that the restriction contained in defendant's special act against varying rates, did not apply to through rates which the commissioners were authorized to establish under the General Act of 1873; at least that the restriction *did not extend to preventing differences between the through rates fixed by the commissioners under the act of 1873 and the ordinary, or local, rates which the company could take under its special act.*"

And, in stating a case for a Superior Court, the commissioners said (p. 133): "*The portions allotted by us to the Birmingham Canal Company out of the said through rates, or tolls, allowed by our judgment, are in some cases lower than the rates or tolls, which the Birmingham Canal Company are entitled to charge, and are now charging, for local traffic carried over the same parts of their canals and navigations.*"

The case of *Richardson et al. vs. Midland R'y Co.*, 4 Eng. R'y and Canal Traffic Cases, page 1, Brown & Macnamara, was decided Aug. 6, 1881.

The applicants were brewers and maltsters at Newark and complained that their traffic was unduly prejudiced by the defendant, by not being carried on as favorable terms as to rates and in other respects, as similar traffic at Burton.

Newark and Burton were both situated on defendant's railway, and defendant was in competition at both places with other railway carriers, and also with carriers by water; *defendant's rates, "to and from both places, had been settled with reference to what it could obtain, having regard to other means of getting the traffic to its destination."* (Pages 6 and 7.)

In discussing the difference between the rates which obtained from other points to Burton and Newark respectively, the commissioners said (p. 9): "*The difference, or part of it may possibly be required by the route from the same district not being the same all the way to the two places, and by the separate portions of line passed over, being more costly to work or construct, in the one case, than in the other; or again, it may be required by a competition for the conveyance of the particular traffic between the two termini, existing in the one case and not in the other.*"

The case of the *Broughton, etc., Coal Co. vs. G. W. R'y Co.*, 4 Eng. R'y and Canal Traffic Cases (Brown & Macnamara), page 191, was decided February 14th, 1883. The applicants were colliery owners in North Wales, and complained that the defendant charged them a higher mileage rate upon their coals, than was charged by the defendant to the colliery owners in South Wales, though all of the collieries were shipping to the same market. One of the defenses relied upon was that the South Wales coal was carried by the defendants in competition with the L. & N. W. R'y Co. by rail, and also in competition with vessels by sea (page 194). The Commissioners (on page 196) said: "In determining the question whether the lower mileage rate from South Wales, is, or is not an undue advantage to South Wales traffic, *we must also take into account how the case stands*, as to either coal being able to be carried

at a less cost to the company than the other, *or as to the two coals being under different conditions as regards competition or other special circumstances.*"

The case of *Strick vs. Swansea Canal Co.*, 16 C. B. N. S. 111, E. C. L., p. 245, was decided April 25th, 1864. A proviso in a canal act directed that the tolls of the canal company should be "charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, in respect of all barges, etc., of the like description, passing along or using the same portion of the canal, and all goods, etc., of the like description, conveyed or propelled in a like boat, and passing along or using the same portion of the said canal, etc., *under the like circumstances,*" etc. It was held "that it was competent to the company to agree to carry at a lower rate for a particular individual, in consideration of a large guaranteed minimum toll, in order to enable them (the company) to enter into competition with a rival line of railway."

It is true that the Judges do not, in their opinion, lay any stress on the fact of competition, and place their justification of the company's rates, upon the ground that the individual to whom lower tolls had been charged than those charged the plaintiff, had guaranteed large quantities of goods, for long distances, in regular loads. But in the statement of the case (page 248), and in the argument of counsel (page 252), reference was made to the fact that at the place where the company received the traffic of the individual to whom the lower rates had been conceded, the canal company was in active competition with a certain railway company, whereas there was no competition whatever at the place where the plaintiff's goods were received. While, therefore, the effect of competition was not discussed in the opinions of the Judges, they



being unanimous in favor of the canal company on the other point, it is quite certain that the matter of competition was debated before the Court; and the Court would doubtless have said that competition could not be regarded in considering "the circumstances" under which the transportation had been conducted, if the Court had believed that such was the law of the case.

In the case of *Ransome vs. E. C. R'y Co.*, 1 Nev. & Mac., p. 63, decided in 1857, though the Court granted relief to Ransome & Co., they were careful to say that they did it without deciding that a railway company may not charge different rates "*where the difference is for the purpose of competing with another line.*" 1st Nev. & Mac., p. 71.

And in *Harris vs. Cockermouth R'y Co.*, 1st Nev. & Mac., pp. 102-3, Chief Justice Cockburn said: "I quite agree that this court has intimated, if not absolutely decided, that a company is entitled to take into consideration any circumstances, either of a general or of a local character, in considering the rate of charge which they will impose upon any particular traffic. As, for instance, in respect of terminal traffic, *there might be competition with another railway*; and in respect to terminal traffic as distinguished from intermediate traffic, it might well be that they could afford to carry goods over the whole line cheaper, or proportionately so, than they could over an intermediate part of the line."

In the case of *Ransome vs. E. C. R'y Co.*, 1 Nev. & Mac., p. 120, decided in 1858, Crowder, Judge, said: "There are many circumstances which may induce a railway company to charge, on parts of their line, rates which leave little or no remuneration, *as the proximity of rivers, or canals, or other lines of railway, which may enter into competition with them and materially affect their interests.*"

I am quite sure that a careful examination of the cases cited above in this section of my argument will leave no reasonable doubt but that the English courts and the English Railway Commissioners have never regarded traffic conducted between competitive points, as conducted "under the same circumstances" as traffic conducted between points not competitive, and therefore that to charge less for longer distances between competitive points, than for shorter distances between points not competitive, was never regarded as a violation of Section 90 of the Railway Clauses, Consolidation Act of 1845.

The same authorities also establish the proposition that the forced concession of competitive rates between competitive points has never been regarded by the English courts or Commissioners as an "undue or unreasonable preference or advantage to, or in favor of" shippers at those competitive points, nor an "undue or unreasonable prejudice or disadvantage to, or against" shippers at points not competitive, and therefore that the concessions by railway companies of such competitive rates to shippers at competitive points, was never regarded as a violation of Section 2 of the English Railway Act of 1854.

It has been said, however, that the cases just referred to, or at least some of them, have been overruled by later English cases.

I have examined all of the cases cited as overruling those cases, and have examined all other English cases which were accessible to me, and I state with great confidence, and without hesitation, that the cases above referred to have not been overruled, and that their authority has not even been shaken, by any adjudication either in the English courts, or by the English Commissioners.

As late as 1873, a Parliamentary Committee, discussing in their report the subject of equal mileage rates, or charges in proportion to distances, express the opinion that such a system was inexpedient and impracticable, for the following, among other reasons: That "it would prevent railway companies from lowering their fares and rates so as to compete with traffic by sea, by canal, or by a shorter or otherwise cheaper railway, and would thus deprive the public of the benefit of competition and the company of a legitimate source of profit." (See Report of Senate Select Committee on Interstate Commerce, 1886, p. 57.)

To insist that rates between competitive points shall never exceed those between points not competitive, would, of course, as effectually destroy competition, as to insist that all rates shall be placed upon a mileage basis, or made in proportion to distance; and it would be singular indeed, if the English courts or Commissioners should have placed a construction upon the English statutes, which would as certainly have destroyed competition, as the system which the Parliamentary Committee repudiated, and against the adoption of which it earnestly protested.

## VI.

In examining the English cases which are supposed to have overruled the cases referred to by me in the last section of my argument, it will save time to divide them into classes.

In the first class will be placed those cases in which it has been held, that under the English statutes a railway company has no right to discriminate against an individual *on account of his occupation or personal status*.

Section 90 of the Railway Clauses Consolidation Act, while it authorizes railway companies to vary their

tolls "so as to accommodate them to the circumstances of the traffic," provides that such tolls shall be at all times charged equally to all persons, and after the same rate in respect of all goods of the same description, conveyed only over the same portion of the line, "under the same circumstances," and in considering whether the goods of one person have been conveyed over a railway "under the same circumstances" as the goods of another person, the English courts have invariably held that the company has no right to consider the *occupation or personal status* of the shippers, but must confine itself to a comparison of the services rendered by the railway to the respective shippers.

The case of *Edwards vs. G. W. R'y*, 11 C. B., 73, E. C. L. (588), was decided November 15th, 1851. The statute of 7 and 8 Vict., C. 3, S. 50, provided that in whatever way the charges of the G. W. R'y Co. "may be made, they shall be made equally to all passengers, and to all persons, in respect of all animals, and of all goods, wares, merchandise, etc., of like description and quality, and conveyed in, or propelled by, a like carriage or engine passing only over the same portion of, and over the same distance along, the said railway *and under the like circumstances.*" (Page 647.)

Parker was what is now known in this country as an express carrier, but in England was called an "intercepting" carrier, and did business over the defendant's railway. The defendant charged him, and other express carriers, higher rates than were charged others who were not such carriers. Jervis, C. J., said (pages 647-8): "The question, therefore, is this, *Is the fact of Parker being a carrier a different circumstance?* or, are the goods carried under different circumstances when they are carried for anybody else? Now, looking at the words (of the statute), I cannot say that they are.

The goods carried are of the like quality, and they are carried along the same portion of the railway, and by the same power, and at the same time, and subject to the same risks and liabilities. In the case of *Pickford vs. G. J. R'y Co.*, 10 M. & W., 399, it was expressly decided that *the fact of a person being a carrier made no difference in the circumstances*. The words of the Act of Parliament in that case were 'under the *same* circumstances,' which are nearly identical with those now in question."

It will be noticed that the Court did *not* say that the goods being of the like quality, carried over the same portion of the railway, by the same power, and at the same time, etc., are the *only* circumstances that are to be regarded. On the contrary, all that the Court said was, "*that the fact of a person being a carrier made no difference in the circumstances*." The case is authority for the position that whether Parker shipped from competitive points, or from points not competitive, he was entitled to the same rates at those points as the general public, and that his being an intercepting carrier, could make no difference in the circumstances of his shipments; but the case is no authority whatever for the contention that Parker, though shipping from non-competitive points, was entitled to the same rates that may have been conceded by the company at points where competition prevailed.

The case of *Parker vs. G. W. R'y Co.*, 73 E. C. L., p. 545, 11 C. B., decided November 14th, 1851, and *Parker vs. G. W. R'y Co.*, 49 E. C. L., p. 253, 7 Man. & Gran., decided February 12th, 1844, and *Crouch vs. L. & N. W. R'y Co.*, 2 Car. & Ker., 789, and *Crouch vs. G. N. R'y Co.*, 9 Exchr., referred to in 1st Nev. & Mac., p. 16, were all cases of discrimination against intercepting carriers in favor of the general public, and where the

discrimination was placed upon the sole ground of the *occupation of the party* discriminated against — they therefore need no comment in addition to what I have said in relation to the Edwards case, referred to above.

If the Louisville & Nashville R. R. Co. were to charge the Southern Express Company, which does business over its lines, higher rates than the general public on shipments from Louisville to New Orleans, the Express Company would, under the cases just noticed, be clearly entitled to redress. There is competition between Louisville and New Orleans, and competitive rates prevail at Louisville, and the Southern Express Company, when shipping from Louisville, is entitled to precisely the same competitive rates as the general public at Louisville.

But Rowlett is a non-competitive local station, a short distance south of Louisville; and if the Express Company should insist that it was entitled to the same rates from Rowlett to New Orleans, as prevail between Louisville and New Orleans, then a totally different question would be presented, and upon which, the cases just noticed throw no light whatever.

The case of *Baxendale vs. G. W. R'y Co.* (known as the Reading case), 1st Nev. & Mac. 202, decided Nov. 15, 1858; *Garton vs. G. W. R'y Co.*, 1st Nev. & Mac. 214, decided Jan. 29, 1859, and *G. W. R'y Co. vs. Sutton*, L. R. 4, H. L. 226 (English and Irish Appeals), differ from the cases just noticed only in this: that the discriminations, while made against intercepting carriers, were not made in favor of the general public, but were made in favor of the railway companies themselves, they being engaged as rivals of the plaintiffs in the accessorial business of intercepting or express carriers; and the point decided was that if a railway company engages in such an accessorial busi-

ness, it can no more discriminate in its own favor, than it can in favor of another individual, or of the general public.

In the Sutton case, Law Reports, 4 H. L. p. 238, Mr. Justice Blackburn said: "The defendants (*i. e.*, the railway company) may, subject to the limitations in their special acts, charge what they think fit, *but not more to one person than they, during the same time, charge to others 'under the same circumstances,'* and I think it follows from this, that if the defendants do charge *more to one person, than they, during the same time, charge to others*, the charge is by virtue of the statute extortionate. \* \* \* \*

It would be of the essence of the case to prove that the goods were of like description and carried under the like circumstances. But I think that this applies to the description of the goods, and the circumstances of the carriage, *and not to the trade of the consignor or consignee*". (Pages 239, 240). Again he said on page 245: "The circumstances must be those relating to the carriage, *not to the consignor, and the fact that the plaintiff was a rival (express) carrier does not in itself make a difference in the circumstances, such as to justify a difference in the charge under the statute.*"

Mr. Justice Willes said (p. 247): "Such (express) carriers are entitled to have their packed parcels carried upon the railway for the same price as other persons. This gives no preference to rivals in trade; *it only puts carriers upon an equality with the rest of the public* as to the price of the same work done for them by the company; \* \* \* goods are conveyed under like circumstances where the route, risk, and expense are, in the opinion of the jury, the same. \* \* \* In effect, I think the phrase 'like description' is exhausted upon the goods, and 'like circum-

stances' upon the route, expense, and risk of carriage, and that neither can be extended to *the personal qualities of the individual who sends the goods.*" (Page 249.)

Lord Chelmsford said (p. 260): "I have felt greater difficulty in ascertaining the meaning of the words 'under the same,' or 'under like circumstances.' I do not see, however, how they can relate to anything else than the conveyance of the goods. *To say that because the plaintiff is what has been called an intercepting (express) carrier, and the other persons using the railway are wholesale dealers, therefore the goods are not conveyed along the railway under the like circumstances, is an application of the words which I am unable to comprehend.*"

I have quoted largely from this case because it has been cited as holding that competition cannot, in any case, be regarded in considering whether one traffic is conducted under the same circumstances as another; but it is manifest that no such question was made or decided in the case.

The only question touching the matter of competition that was considered by the Court, was the competition which existed between the plaintiff, Sutton, and the railway company in the accessorial express business. The railway company in that case acted in two distinct capacities:

First—As a railway company proper, in the transportation of freight and passengers from point to point.

Second—In the capacity of an express carrier, in collecting and delivering packages transported over the railway.

The point decided by the Court was, that whenever a railway company assumes to act in the capacity of an



express carrier, it must treat its own express business, precisely as it treats express business offered to it by other express carriers. But as to whether a company, acting in its proper capacity as a railway company, may compete with other railway companies, or with water lines, and in such competition, may concede lower rates at competitive points than prevail at non-competitive points, was not involved, nor was it even discussed by the Judges in the Sutton case.

Quite an unfair use has been made of the Sutton case, by putting an improper emphasis upon certain words used by the Justices; and by isolating those words from the connection in which they were used. Thus: Justice Blackburn has been quoted as having said that the words "under the like circumstances" applied only to the circumstances of the carriage; whereas, what he did say, was, that those words applied to the circumstances of the carriage, and *not to the trade of the consignor or consignee*. (See pages 239, 240.) Again he said, on page 245: "The circumstances must be those relating to the carriage, *not to the consignor*, and the fact *that the plaintiff was a rival express carrier* does not in itself make a difference of circumstances, such as to justify a difference in the charge under the statute."

In that case the only question was whether the circumstances of the carriage or the trade and occupation of the consignor should be considered; and all that his Honor meant was that, as between the two, the circumstances of the carriage ought to be regarded, and not the trade or occupation of the consignor. He did not intend to say that in no case was any thing to be considered except the circumstances of the carriage.

Mr. Justice Willes has been quoted as saying that

the effect of the phrase "like circumstances" is exhausted upon the route, expense, and risk of carriage. But what he did say (see page 249) is, that the phrase "like circumstances" is exhausted upon the route, expense, and risk of carriage, and must not be extended to the *personal qualities of the individual who sends the goods*.

Evidently his meaning was the same as that of Justice Blackburn. He did not intend to say that in no case could anything be considered except the route, expense, and risk of carriage. But he held that where the only question presented was whether consideration should be given to the route, expense, and risk of carriage, or whether it should be given to the personal qualities of the individual who sends the goods, it should be given to the former, and not to the latter.

Lord Chelmsford has been quoted as holding that the words "under the same circumstances" cannot relate to anything else than the conveyance of the goods; but what he did say (page 260) was this: "I do not see, however, how they can relate to anything else than the conveyance of the goods. *To say that because the plaintiff is what has been called an intercepting carrier and the other persons using the railway are wholesale dealers, therefore the goods are not conveyed along the railway under the like circumstances, is an application of the words, which I am unable to comprehend.*"

He evidently meant no more than Justices Blackburn and Willes. He did not intend to say that in no case can anything be considered except the mere fact of the conveyance of the goods, but he meant that, as between that fact, and the fact that the plaintiff was an intercepting carrier, consideration should be given to the former, and not to the latter. In a word, all that was intended

to be said by any of the Justices was, that a railway company has no right to look to the occupation or personal status of a shipper; and the question as to whether the company would be justified in charging lower rates at competitive points, than it was charging at non-competitive points, was never presented to the minds of the Justices, nor considered by them for a moment.

## VII.

The next class of English cases to be considered is where the courts have held under the Railway and Canal Traffic Act of 1854 that a railway company cannot legally discriminate in favor of a traffic *because of its origin or antecedents*. The act of 1854 provides that "no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular description of traffic, nor shall any such company subject any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." (See 1st Nev. & Mac., p. 2.)

This class of cases is well illustrated by the case of *Ransome v. E. U. Ry Co.*, 1st Nev. & Mac., 63, decided January 29th, 1857. It appeared in that case that the defendant railway company charged Ransome & Co., coal merchants at Ipswich, who shipped from thence over defendants' railway, coal, which had come thither by sea, a higher rate for the carriage of their coal over the defendants' lines than was charged to Prior & Co., whose coal came over another railway to the defendant's at Peterborough. It appeared that the lower rates were given to Prior & Co. to enable them to compete with Ransome & Co., whose coal had the advantage of cheaper transportation by sea, before reaching defendants' railway. The defendant, therefore, appeared to have discriminated in favor of Prior & Co., simply because it had cost them

more to get their coal to the defendants' railway, than it had cost Ransome & Co., to get their coal there; and the court, in effect, held that a railway company cannot legally prefer one traffic to another, simply because the one has cost more than the other in getting it to the railway, or because one traffic was brought to the railway by sea, and the other by some different mode of conveyance. In other words, *the origin or antecedents of a traffic* are not to be considered by a railway company at all; if all the other circumstances are alike, one traffic is entitled to the same rates and facilities as the other.

If freight is brought to the Louisville & Nashville R. R. Co. at Louisville by steamboat from Pittsburg, and similar freight is brought from Pittsburg via. the O. & M. R'y to Louisville, and both shipments are tendered to the Louisville & Nashville R. R. Co. for transportation to New Orleans, that company cannot, according to the class of cases just cited, legally discriminate in favor of the freight brought by railway to Louisville, over that brought by steamboat.

I do not controvert the correctness of this class of decisions, but I say that they have no application to the question now under consideration.

The Louisville & Nashville R. R. Co. does not propose to make any difference in rates, whether the traffic comes to its lines by one mode of conveyance or another, or whether the goods have cost their owners more in the one case than in the other. It simply claims the right to allow to all shippers alike, competitive rates where competition exists, and to charge reasonable rates where no competition does exist.

### VIII.

The next class of English cases to be considered is where the courts have held under the act of 1854 that

a railway company cannot legally discriminate in favor of a traffic, *because of the ultimate use to which it is to be put*, after the railway transportation has been completed and ended. In other words, that it is not for a railway company to consider whether goods shipped over its line are to be used for one purpose or another.

This class of cases is illustrated by the case of *M. S. & L. R'y Co. vs. Denaby Colliery Co.*, 4th Eng. R'y and Canal Traffic Cases, 452, decided in December, 1884. It appeared in that case, that the plaintiff's railway ran through the South Yorkshire coal field, in which the defendant company's colliery was situated; and that most of the coal from that field was shipped over plaintiff's railway to Grimsby, on the sea-coast. *The plaintiff's railway was the only railway leading from that coal field to Grimsby, so that plaintiff had no competition whatever for the traffic.* (Page 438.)

Some of the coal shipped to Grimsby, was for "land sale" there, or local consumption.

Some of it was sold to the Hamburg and American Steamship Company, for steam purposes.

And some of it was shipped from Grimsby to English ports south of Harwich.

The Hamburg and American Steamship Company had been using Welsh coal for their steamers, but it was ascertained by plaintiff, that if the steamship company could get the South Yorkshire coal, at a certain reduction on the then current price, they would buy coal at Grimsby, in place of the Welsh coal. To enable this to be done, and in the hope that the South Yorkshire coal might thus be introduced to the West Indian market, the plaintiff agreed to make to one Bannister a certain reduction from plaintiff's regular rates, upon all South Yorkshire coal sold to the Hamburg-Ameri-

can steamers. *Plaintiff gave no public or other notice that it was allowing Bannister this reduction, nor did plaintiff notify the public that it would make similar reductions to other persons under similar circumstances.* There was no contract on the part of Bannister that any definite quantity should be so shipped; and the services performed by plaintiff in respect of such coal, were identical with those performed by it in respect of any other coal shipped to Grimsby. (Page 139.)

The plaintiff also allowed said Bannister a certain reduction from plaintiff's regular rates on all coal shipped by him from Grimsby to English ports south of Harwich. There had been but little trade of that kind, and Bannister undertook to develop the trade, to provide vessels, and to run the risks incidental to the working of such a traffic; and in consideration of his doing so, and in view of the anticipated advantage to plaintiff by the increased tonnage over its railway, the plaintiff agreed to allow him the reduction upon such coal as he might ship to English ports south of Harwich. *No opportunity was afforded to the public in general, or to other persons sending coal by plaintiff's railway to Grimsby, of getting the same reduction on such coal as they might ship to English ports south of Harwich.* There was no contract on the part of Bannister that he would ship any definite quantity of such coal; and the services performed by the plaintiff in respect to such coal as was shipped by Bannister from Grimsby to English ports south of Harwich were identical with the services performed by plaintiff in respect to any other coal shipped over plaintiff's railway from the South Yorkshire coal field to Grimsby. (Pages 441, 442.)

As stated before, the plaintiff's railway was the only railway leading from the South Yorkshire coal field to

Grimsby, and the plaintiff had no competition for that traffic.

The coal field was a local, non-competitive point on plaintiff's railway, and the only question before the Court was whether a railway company can make a reduction from its regular local rates, in favor of one local shipper, merely because he agrees to try to develop a certain traffic, and thereby increase the tonnage of the railway, when he does not obligate himself to ship any definite quantity, in any specified time, *and when the railway company does not offer similar reductions to other local shippers, who may be as willing and as able to aid in developing the proposed traffic as the shipper who was favored.*

But while it may be true that a railway company has no right to charge one local shipper less than another local shipper, merely because the former agrees to aid to some indefinite extent in developing a new traffic, it does not follow that either of the local shippers is entitled to rates that may be prevailing at competitive points.

The most that can be claimed as having been actually decided in the case is that where the services performed by a railway company in respect of one local shipment are identical with the services performed by said company in respect of another local shipment, the two shipments will be regarded as having been made "under the same circumstances," notwithstanding any difference that may exist between them *as to the ultimate use to which they are to be put after their arrival at the place of common destination.* But in deciding that proposition, the Court did not decide that the *services* performed by a railway company are the *only* matter to be considered in determining the "circumstances" under

which a shipment is made; and still less did the Court decide that a shipment accepted under the duress of competition is accepted "under the same circumstances" as one made from a local point where no such competition exists.

See the same case reported in L. R., 11 App. Cas. 97, where the decision of the Queen's Bench Division was affirmed by the House of Lords.

The case of *Oxlade vs. N. E. R'y Co.*, 1st Nev. & Mac., 72, decided in 1857, may be said to belong to the same class as the Denaby case just noticed. In the Oxlade case it appeared that the defendant railway company, from a desire to introduce the northern coke into Staffordshire (page 94) charged less for the carriage of that kind of coke than they charged for other kinds of coke. It did not appear that the northern coke was mined upon defendant's line, or that the defendant was directly interested in its development; on the contrary, it seems to have been brought to the defendant's road from the M. C. R'y, just as the other cokes were brought to defendant's road from other railways.

The Court held that the mere desire to introduce northern coke into Staffordshire was not a legitimate ground for discriminating in its favor against the other cokes. But the Court remarked "that other special circumstances are stated in the arguments which, *had they affected the pecuniary interests of the company*, might have furnished ground for contention that the preference was not undue or unreasonable."

If two merchants at Louisville offer to the Louisville & Nashville R. R. Co. similar shipments consigned to New Orleans, they are, under the class of cases just noticed, entitled to the same competitive rates, though one of them may intend his shipment for export to Cuba,



and the other may intend his for local consumption at New Orleans. The Louisville & Nashville R. R. Co. is not seeking to be allowed to make any discrimination between any such shipments. It is willing to charge all Louisville shippers equal rates on similar classes of freights to New Orleans, without regard to what they propose to do with their shipments. What the company does claim is, that because it is forced to concede certain competitive rates to Louisville shippers, it shall not be forced to give the same rates upon similar shipments from local stations where no such competition exists, provided it charges no more than reasonable rates from those local stations.

It may be argued, however, that if a railway company cannot legally discriminate in favor of local traffic, with the view of developing it, and thereby increasing the tonnage of the road, so as to promote the pecuniary interests of the company, it cannot be allowed to develop traffic at competitive points, by charging lower rates than it charges upon similar traffic from points that are not competitive.

By a close examination of the Denaby case, it will be seen that the objection which the Court found to the conduct of the railway company in that case was, not that the company was attempting to develop its local traffic, and thereby promote its pecuniary interests, but that in its attempt to develop that traffic, it had given Bannister certain rates *which it had not offered to other local shippers engaged in the same traffic*, and lower rates than it had charged the Denaby Company, which was engaged in the same local traffic. And in the Oxlade case, it will be seen that the railway company was not attempting to develop a local coke trade, located upon its own line, but was discriminating *in favor of coke brought to its road by certain railways, and against*

*coke brought to its road over certain other railways.* Whether the real object of the company in desiring the introduction of northern coke into Staffordshire, was to increase its own tonnage, and thereby promote its own pecuniary interests, does not distinctly appear from the report. But if those cases are to be taken as having decided that a railway company cannot legally discriminate in favor of a new and undeveloped local traffic, merely because such local traffic may tend to increase its tonnage, it does not follow that the company may not secure competitive traffic to its line by conceding such rates as may prevail at competitive points, notwithstanding it may not reduce its local rates; provided always,—that the local rates are, in and of themselves, reasonable.

To illustrate: The St. Bernard Coal Company has a coal mine in operation at Earlington, Ky., on the line of the Louisville & Nashville R. R. It has been operated for many years, and furnishes considerable local tonnage to the railroad company. If a new coal company should propose to open a new coal mine near Earlington, and offer to ship its coal over the Louisville & Nashville R. R. from Earlington, provided it was allowed lower rates than the St. Bernard Company, it might be urged with great force, that though the opening of the new mine would increase the tonnage of the Louisville & Nashville R. R. Co., and thereby subserve its pecuniary interests, the lower rates given to the new company would have the effect to correspondingly injure the established business of the St. Bernard Company, especially if it could be shown that the St. Bernard Company was able to fully supply the present demand for that kind of coal; and it might be claimed that it would be unfair to allow the railroad company to promote its own interest at the sacrifice of the St.

Bernard Company. But where a railroad company concedes at a competitive point, competitive rates to shippers at that point, while they may have a certain advantage over shippers at non-competitive points, it is an advantage which the competitive shippers have, not by reason of the action of the railroad company, but by reason of the fact that they can secure similar rates by other competing routes.

In the Denaby case, and in the supposed case of the St. Bernard Company, the discrimination *would be made by the railroad company itself*, in favor of one local shipper against another local shipper; and though the company's own pecuniary interests might be promoted, it would inflict an injury upon one of its local customers in order to benefit itself; whereas, at competitive points like Louisville, etc., the Louisville & Nashville R. R. Co. *does not fix the competitive rate at all*. The rate is fixed by competing lines, and if the company declines to take business at the competitive rate it will go by the other lines of transportation, and the local shippers on the Louisville & Nashville R. R. will be left just where they were.

## IX.

The next class of English cases to be considered is where the courts have held that a railway company has no right to discriminate between different *local* shippers *by depriving one of them of a natural advantage* which he may have over the other, by reason of location, distance, etc. This class of cases is illustrated by the case of *Ransome vs. E. C. Ry Co.*, 1 Nev. & Mac., 109, known as case No. 2, and decided on February 25th, 1858. It appeared that after the decision of the first case between the parties, and which has been cited

above, the defendant readjusted its rates upon an anomalous scale, which, while it applied to places where the plaintiff did not deal, as well as to places where he did deal, was so arranged as to practically continue the discrimination against him; and it was, therefore, "in really a disguised infringement of the principles on which the judgment of the Court had proceeded in the first case." The discrimination in the second case was effected, however, by so adjusting the rates as "*to diminish the natural advantages which the position of the plaintiff and other dealers at Ipswich, by reason of its greater proximity, gave them over the dealers at Petersborough, in respect of the traffic of a certain territory, by annihilating, in point of expense of carriage, a certain portion of the distance between Petersborough and the aforesaid territory.*" (Page 114.)

*It does not appear that Petersborough was a competing point, or that it was other than a mere local station.* The defendant had therefore undertaken to prefer shippers at one local station over shippers at another local station, in its adjustment of rates to the territory into which the shippers at both of said stations were in the habit of shipping competitive coals, by giving a lower mileage rate to the more distant station; no satisfactory explanation of its conduct was given by the defendant, and probably for the reason that none could be given.

The case of *Denaby Main Colliery Company vs. M. S. & L. Ry*, 3 Nev. Mac., 426, decided in 1880 by the English Commissioners, may also be considered in this class. The Denaby colliery was located on the eastern edge of a coal field, which was about twenty miles wide, and which was crossed by the defendant's railway. There were a number of other collieries in the same coal field, and some of them were situated ten or fifteen miles farther west than Denaby. The coals were all

shipped to the same markets, the principal markets being east of the coal fields. Instead of charging each colliery according to the distance its coals were carried, the defendant grouped all the collieries in that coal field into one class, and charged the same rate per ton to all of them, without regard to the distances carried for any of them. The Denaby Company insisted that it was entitled to its natural advantage of being ten or fifteen miles nearer the market than some of the other collieries, and that it was unduly prejudiced by being charged as much per ton as the collieries that were more distant from the common market. *There was no railroad or other route competing with defendant for any of the traffic*, and the only point involved or decided by the commissioners in the case was, that as between different *local* shippers shipping from *non-competitive* points to the same market, they ought, other things being equal, to be charged according to their respective distances from the market, so as to give to each the benefit of his natural advantages of location. Though the opinion of the commissioners upon this point was overruled by the Court of Appeals and the House of Lords (see 4 R'y & Canal Traffic Cases, 437, and L. R. 11 App. Cas., 97, 99), I am content for the purposes of my argument to accept the opinion of the commissioners as correct.

As I understand the tariffs of the L. & N. R. R. Co., they do not deprive any of its local shippers of any natural advantages which any of them may possess by reason of location, etc. On the contrary, all of them are charged reasonable rates, and proportionate to their respective distances from the nearest competitive points; so that at all local stations the indirect advantages of competitive rates are secured by the local shippers.

What the company asks is, that while it charges all of

its local shippers reasonable rates, and in proportion to their respective distances from competitive points, it may not be forced to give to them the same rates as those which may prevail at such competitive points; for, to do so, would, in the opinion of the company, be unjust to the shippers at the competitive points, by depriving them of the natural advantages which they possess over local shippers, by reason of the former being located at such competitive points.

## X.

The next class of English cases to be considered is where the courts have held that a railway company *has no right to give to some of its local shippers the benefit of competitive rates, while it refuses those rates to other local shippers, upon some ground that is capricious, arbitrary and unreasonable.*

An illustration of this class of cases will be found in the case of *Budd vs. L. & N. W. R. R.*, which was decided June 18th, 1877. See 4 Eng. R'y & Canal Traffic cases, 393 (Brown & Macnamara).

The plaintiff's company were the proprietors of iron and tin-plate works situate near defendant's railway, running from the seaport of Swansea to Liverpool, and about twelve miles from Swansea. The defendant charged plaintiff's company higher rates on plaintiff's traffic to Liverpool, than were charged by defendant upon similar traffic to other manufacturers whose works were situate *within a radius of six miles of Swansea.*

There was communication by sea between Swansea and Liverpool, "but the distance was greater than by railway. The sea passage was cheaper than the railway, but manufacturers preferred the railway because delivery was quicker and more certain. *There was, how-*

*ever, an arrangement between the carriers of goods by sea and the defendants, for the carriage of such goods,"* and defendant's rate (from Swansea) was fixed to enable defendant to compete with the sea carriage. (Page 394, 395.)

Chief Baron Kelly was of opinion that the defendant's conduct amounted to an undue preference and advantage to the manufacturers *within the six miles radius* of Swansea; because it enabled those manufacturers to sell their goods at a rate of ten or twelve per cent. cheaper than the plaintiff's company in the Liverpool market.

The defendant had not confined its competitive rate to the town of Swansea proper, where the only semblance of competition existed; but had allowed the competitive rate to manufacturers whose works were outside of the town, provided they were not more than six miles from the town. The six mile limit seems to have been a purely arbitrary arrangement on the part of the defendant; no reason whatever was offered for making it, and yet, in the language of the Chief Baron, "a manufacturer who happened to be a half mile within the six mile limit was preferred to one who happened to be immediately outside of it."

Manifestly none but Swansea shippers proper were entitled to the Swansea competitive rate; and defendant had no more right to allow that rate to manufacturers who were six miles away than to those who were sixty miles distant. The attempt to allow the Swansea competitive rate to local shippers whose works were six miles distant from Swansea, was, of course, an undue preference of those local shippers, over other local shippers whose works may have actually adjoined those of the favored shippers, provided the former happened to be a few inches over the arbitrary six mile limit.

In a word it was an undue preference of one local shipper over another local shipper.

The Court *did not decide* that the defendant could not charge a lower rate to meet competition at Swansea, *when the freight was delivered by the shippers to the defendant at the regular Swansea station or depot.* It may be claimed that the Court would have gone that length, but no such point was actually decided. The Chief Baron said: "The question still would remain, *supposing they are entitled to charge a lower rate for some and not for others, where are they to stop?*" (Page 396.) The defendant in that case claimed the right to extend its Swansea rate to a distance of six miles from Swansea, whereas it ought to have been confined to freights delivered at its Swansea station proper. Every shipper in the kingdom was entitled to the Swansea competitive rate, provided he would deliver his freight to the defendant at the Swansea station; and no shipper was entitled to that rate, if he delivered his freight at any other point, whether the point of delivery was sixty, or only six, miles distant from Swansea.

It is worthy of notice, in estimating the weight to which the Budd case is entitled, that there was, in reality, no actual competition at Swansea. The rail route was the shortest, quickest, and most certain, and, therefore, preferred. There was an arrangement of some sort existing between the defendant and the carriers by sea, which had resulted in the rate which defendant was charging from Swansea; and as the nature of that arrangement is not disclosed, I suspect that "a pool" existed between the defendant and the carriers by sea, by which an agreed rate on the traffic from Swansea to Liverpool was fixed high enough to justify the defendant in dividing the proceeds of the traffic



with the sea carriers. What effect the suspicion of such an arrangement may have had upon the mind of the Chief Baron, of course cannot be known.

The Louisville & Nashville R. R. Co. makes no such arbitrary or capricious distinction between its customers as was made in the Budd case. The company is perfectly willing to concede competitive rates to every shipper who delivers his freight to the company at competitive points, without regard to where the shipper may live, and without regard to where his manufactory or other business enterprise may be located. But what the company insists upon is that no shipper is entitled to competitive rates unless his shipment is delivered to the company at a competitive point, and that whether the shipper lives one mile or one hundred miles from a competitive point makes not the slightest difference.

## XI.

The next class of English cases to be considered is, where the courts have held that a railway company *cannot legally discriminate in favor of one local shipper against another local shipper merely to prevent a threatened competition at a point where no actual competition exists*. The cases of *Harris vs. Cockermouth R'y Co.*, 1st Nev. & Mac., page 97, decided January 15th, 1858; *Slate Co. vs. Festiniog R'y Co.*, 2d Nev. & Mac., 73, decided in December, 1874, and the case of *Holland et al. vs. Festiniog R'y Co.*, 2d Nev. & Mac., 278, decided in February, 1876, all belong to this class.

There was no actual existing competition in either of the cases, and yet the railway companies had undertaken to concede lower rates to certain local shippers than to others, with the hope that they would thereby secure the traffic of the favored shippers and prevent them from constructing, or aiding in the construction of rival

lines. In the Harris case it appeared that the plaintiffs shipped coal over the defendant's railway, as did also certain tenants of Lord Lonsdale. The shipments were made from different stations, but they were all made from the same district, and all of the stations from which the shipments were made were within half a mile of each other; for all practical purposes the shipments were all made from the same point, and to the same point. There was no *existing* competition whatever; but the defendant averred that Lord Lonsdale had threatened to build a competing line, unless his tenants were given lower rates than the plaintiffs, and that the defendant had made the concession to his tenants for fear that Lord Lonsdale would execute his threat, and injure defendant's business by building the competing line. The Court held that a mere threat of that kind was no sufficient justification for such a preference. Willes, J., said (page 108) that "it would be absurd to proceed upon mere speculations as to what may happen," and that the Court could only deal with the state of things actually existing.

The defendant had confessedly undertaken to give one local shipper a preference over another local shipper, where both were shipping under substantially similar circumstances and conditions, merely because the former had threatened to build a competing line sometime in the future. The Court was careful to distinguish the case then before them from one where actual competition exists, and it was in that case that Cockburn, Chief Justice, said (pp. 102, 103), that the Court had intimated, if not absolutely decided, that a railway company is entitled to take into consideration any special circumstances, either of a general or of a local character, including the circumstances of actual competition with another railway.

In the cases of the *Slate Company vs. Festiniog R'y Co.*, 2 Nev. & Mac., p. 73, and *Holland et al. vs. Festiniog R'y Co.*, 2 Nev. & Mac., 278, it appeared that the slate quarries were all located in the same district and shipped to the same market over the defendant's railway. There was no other railway or competing route by which any of the slate could be shipped. The defendant railway company, with the object of discouraging the construction of a competing line, had agreed to carry slate for certain quarry owners at a lower rate than was charged to the other quarry owners in the same district. The favored quarry owners had obligated themselves to ship all their slates over the defendant's line for a certain number of years, but they had not agreed to ship any definite quantity, in any specified time, nor in train load lots.

The same terms were offered to the plaintiffs, but they refused to accept them. The decision in effect was, as in the Harris case—viz., that a railway company has no right to prefer one local shipper to another, simply because the former has agreed to give all of its traffic to the company, and not to aid in the construction of a competing line.

If the Louisville & Nashville R. R. Co. were to give lower rates to certain shippers at Gallatin, a local station upon its road, than it gives to other local shippers at that point, in consideration that the former should agree to ship all their traffic over the company's road, and not aid in the construction of the contemplated Chesapeake & Nashville R. R., a case would be presented precisely within the class of cases just cited. But the Louisville & Nashville R. R. Co. makes no such discrimination between its local shippers. All shippers at Gallatin are placed upon terms of perfect equality as

between themselves. The only contention of the company is that the local rate at Gallatin being reasonable in and of itself, Gallatin shippers are not entitled to the competitive rates which prevail at Nashville or Louisville.

It may be argued, however, that if a railway company cannot legally discriminate between its local shippers in order to prevent competition which is merely threatened, it has no right to discriminate where the competition has become an existing fact. But the reason why the discrimination is unjust in the one case and not in the other, is that where the competition is merely threatened the traffic is as yet purely local, and the discrimination is therefore the act of the railway company, and has no justification except the mere desire of the company to protect its interests from a competition which may or may not exist in the future; whereas, in the case where competition actually exists, the discrimination is not the act of the railway company at all. The competitive rates at competitive points, which are really the cause of the discrimination which exists in favor of competitive shippers, are not the act of the railway company at all, but the act of competing lines over which the company has no control, and for which it ought not to be punished.

## XII.

The next class of English cases to be considered is where the courts have held that a railway company *cannot legally discriminate in favor of one local shipper against another local shipper simply because the former has agreed to ship the whole, or some indefinite amount of his traffic over the defendant's line, while the other has not,*

In this class may be placed the cases of *Barendale vs. G. W. R'y Co.* (known as the Bristol case), 1st Nev. & Mac., 191, decided November 9th, 1858, and the case of *Bellsdyke Coal Co. vs. N. B. R'y Co.*, 2 Nev. & Mac., 105, decided in March, 1875. In the latter case it appeared that the defendant railway company had given to Messrs. Baird less rates upon coal than it charged the plaintiffs and other coal owners, notwithstanding the coal mines were all located in the same district and shipped to the same markets. The defendant's railway was the only one running into that district, *and had no actual competition whatever.*

One excuse given by the defendant for the preference in favor of Messrs. Baird was, that the latter had agreed to ship all of the traffic of one of their coal mines by defendants railway; but they had not obligated themselves to ship any specific quantities at regular periods, nor in train load lots.

It was not pretended that the discrimination in favor of Messrs. Baird would have been unjust if they had bound themselves to ship definite quantities, at regular periods, and in train load lots; because such traffic could have been handled by the company at less cost. But the agreement of Messrs. Baird having been wholly indefinite, the English Commissioners were of the opinion that there was no reason to believe that the traffic of Messrs. Baird could be handled by the defendant at any less cost than the traffic of the plaintiff's, and that as all the coal mines were situated in the same district and shipped to the same markets, there was no substantial difference in their circumstances.

The L. & N. R. R. Co. makes no such discrimination between its customers as was practiced in the cases just cited. It gives the same rates equally to all shippers

of the same class of freight between the same points, whether the shipments are greater or less in amount. Of course car-load rates are less than rates on small lots, because car-load lots can be handled with less cost. But all the rates, whether they be car-load rates or other rates, are open to all shippers without distinction. This obtains as well at non-competitive points, as at points that are competitive. Nor does the company desire any change in this regard in the future. While treating all shippers similarly situated precisely alike, it insists that it shall not be compelled to place shippers at non-competitive points, upon equality with shippers at competitive points; and for the reason that such shippers are not similarly situated or circumstanced.

### XIII.

The last class of English cases which it will be necessary to consider is where the courts have held that a railway company cannot legally discriminate *in favor of one competitive shipper against another competitive shipper, shipping the same class of freight between the same competitive points*, unless there be some substantial difference in the cost of the service to the company. The case of *Garton vs. B. & E. R'y Co.*, 1st Nev. & Mac., 218, decided June 13, 1859, will furnish one illustration of this class of cases. It appeared in that case that certain special contracts had been entered into by the defendant with certain individuals, under which those persons were charged lower rates than the plaintiff Garton in the carriage of heavy packages of grocery and hardware between Bristol and Bridgewater. It was suggested that the reason for such discrimination was, that the persons with whom the special contracts were made, had agreed to ship all of their goods by defendant's railway, and not by water or other means. It is evident

from the opinions of the Judges that they did not believe that the reason assigned, was the true one. It was not shown that there was any actual competition by water between Bristol and Bridgewater; and if there was, it was not shown what the rate of charge for such water carriage was, as compared with the rates charged by defendant's railway. Without undertaking to express an opinion as to the legality of such contracts, if the Court had been satisfied of their *bona fides*, it was held that the plaintiff had made out a *prima facie* case in showing that he did not have the same rates and facilities afforded him, for the conveyance of his goods, as were conceded to the favored individuals with whom the special contracts were made.

A similar case would be presented if the Louisville & Nashville R. R. Co. should select a few favored merchants at Louisville, and agree to charge them less to New Orleans than the general public at Louisville, provided said favored merchants would agree to ship all their goods to New Orleans by the Louisville & Nashville R. R. and not by river, nor by the C. O. & S. W. R. R., a rival railway.

One objection to such an arrangement would be that it would not be open to the general public, and no one could get the benefit of it except the favored merchants selected by the company.

If such an arrangement had been offered to the entire public at Louisville, and some merchants had agreed to it, while others had not, there is nothing in the case last cited, holding that the merchants who declined to enter into the arrangement, could complain that an undue or unreasonable preference had been shown to those merchants who had entered into it. But, even if the case had gone to that extent, it would not have touched the

question now under consideration; for, while it might be held that the company could not charge one portion of the community at a competitive point like Louisville, higher rates to New Orleans, than the other portion of the community, simply because the former had refused to restrict themselves to that company's line, yet it would not follow that because all shippers at Louisville were equally entitled to the competitive rates there prevailing, other shippers who reside at non-competitive stations between Louisville and New Orleans, would be entitled to the benefits of Louisville competition.

It will be remembered that the special contracts in the case last cited were for the shipments of indefinite quantities. If the contracts had been for the shipment of definite quantities, at regular intervals, in train-load lots, there could have been no question as to the legality of the preferences under the numerous cases cited in the preceding part of this argument; because freight shipped in definite quantities at regular intervals, can be handled at less cost to the company; than where it is uncertain in amount and uncertain as to when it will be offered for shipment.

The case of *Thompson et. al. vs. L. & N. W. R'y Co.*, 2 Nev. & Mac., 115, decided by the English Railway Commissioners in February, 1875, and the case of *L. & N. W. R'y Co. vs. Evershed*, decided by the House of Lords July 5th, 1878, L. R. 3 App. Cas., p. 1029, *et seq.*, furnish another illustration of the class of cases now under consideration.

They both grew out of discriminations made by the London & Northwestern R'y Co. between certain competitive shippers at Burton-upon-Trent, and are substantially alike in all of their essential facts. There were three railway companies having stations in the town of



Burton-upon-Trent, by any one of which goods could be sent from Burton to any part of the United Kingdom. The Midland R'y Co. and the London & Northwestern R'y Co. were two of those companies, and in active competition with each other at that point. Certain persons owned breweries adjacent to the main line of the Midland Railway, and had side tracks running from said main line into their breweries, so that their freights could be loaded and unloaded by their own servants directly upon the cars of the Midland Railway, without any expense for drayage or other terminal charges.

The practice with most of the English railway companies is to collect or receive freights at the houses of consignors, haul them to the railway depot at place of shipment, load them upon the cars, and after carrying them upon their trains to stations of destination, the companies unload them and haul them to the houses of consignees. The companies charge for hauling, loading, and unloading when those services are performed by them, but if shippers see proper to haul, load and unload their own freights, or to employ some third person to do it, the railway companies charge only for carrying the freight in their trains from point of shipment to point of destination, and this last mentioned charge is known as the "station to station rate."

As the persons above referred to, whose breweries were connected with the Midland Railway by side tracks, did their own loading and unloading into and out of the cars of the Midland Railway, and as their goods were not hauled or drayed to or from its railway, the Midland company made no charge against those persons except the "station to station rate;" and even allowed them a certain rebate from that rate. The London & Northwestern Railway Company charged

the plaintiffs, and the public generally, at Burton, whose breweries were not connected with the Midland Railway, in addition to the "station to station" rate, certain rates for hauling, loading, and unloading; but in order to compete for the business of those persons whose breweries were connected with the Midland Railway by side tracks, the L. & N. W. R'y Co. agreed to haul their freights to and from the depot, to load and unload them free of charge, and to allow them the same rebate on the "station to station" rate as was allowed them by the Midland Railway Company. It was held that this was an undue preference of those persons over the plaintiffs, and the general public at Burton.

The English Commissioners (2 Nev. & Mac., p. 119) refer to the fact that there was no agreement on the part of the persons favored, to ship any definite quantity of freight by the L. & N. W. R'y, and that there was no evidence of any saving of cost to that company, to compensate it for the concession made to those persons; the preference therefore could not be justified upon the ground that it was to the pecuniary advantage of the defendant. The defendant then took the broad ground that *any* "advantage given by a railway company to obtain traffic for which it competes with another railway company" is not undue or unreasonable in the sense of the statute; but the Commissioners replied: "Such a proposition cannot, in our opinion, be laid down *unreservedly*. *It may be true in certain circumstances*; it would not be so in others, and what degree of favor can lawfully be shown to some persons to the prejudice of others, under the pressure of competition, can only be decided in any case that arises by a reference to its special circumstances." (2 Nev. & Mac., 120.)

It must be kept in mind that in the case before the

Commissioners, a railway company had attempted to discriminate in favor of certain competitive shippers, against other competitive shippers, shipping to and from the same competitive points, where the services rendered by the company to the different shippers were precisely the same, and where the shipments were in every other respect made under precisely the same circumstances and conditions. But that is not the case presented by the Louisville & Nashville R. R. Co. at all; that company concedes to every competitive shipper at every competitive point, precisely the same rates that it concedes to any other shipper at that point. What the company insists upon is, that it shall not be compelled to concede to shippers at non-competitive points, the rates which it is forced to concede to shippers at competitive points.

It will be noticed that the Commissioners in the Thompson case, above cited, say that even where the discrimination is made between different competitive shippers at the same competitive point, there may be certain circumstances, not mentioned by the Commissioners, which would justify such discrimination. But as the Louisville & Nashville R. R. Co. is not seeking to discriminate between competitive shippers at competitive points, it is unnecessary to inquire what those circumstances may be.

The Reporters in their note to *Thompson vs. L. & N. W. Ry Co.*, 2 Nev. & Mac., 121, state the rule as the understood in England as follows: "*It appears that competition between two railways, or by sea, or canal, is a sufficient justification for a railway company reducing its fares to the public who are affected by such competition, and can take advantage of it.* But that a railway company cannot, merely for the sake of increasing their traffic,

reduce their fares in favor of *individuals*, unless there is a sufficient consideration for such reduction, which shall lessen the cost to the company of conveyance, or other services rendered by them to such individuals." Citing *Strick et al. vs. Swansea Canal Co.*, 16 C. B. N. S., page 245; Ransome's case (No. 1), 1 Nev. & Mac., page 63; Oxlade's case (No. 1), 1 Nev. & Mac., page 72; Harris' case, 1 Nev. & Mac., page 97; Nicholson's case, 1 Nev. & Mac., 121-143, and *Garton vs. B. & E. R'y*, 1 Nev. & Mac., 218.

This note of the Reporters states exactly my conception of the English law, which is that a railway company may, in order to meet competition with other railways or with water lines, reduce its fares or rates to the public at such competitive points, provided it makes its reductions equally and impartially to every one who offers to ship from such competitive points. But it can no more discriminate between different competitive shippers at competitive points, than it can discriminate between different non-competitive shippers at non-competitive points, unless the shippers have obligated themselves to ship definite quantities, at regular intervals, in train-load lots, or have in some other way, offered a traffic to the company which can be conducted at less cost to the company than other traffic.

In the Evershed case, above cited, L. & N. W. R'y Co., 3 App. Cas., page 1035, the London & North-western R'y Co. had discriminated in favor of Messrs. Trueman and Messrs. Inn, whose breweries were connected with the Midland R'y by side track, against Evershed, whose brewery was not connected with the railway. The discrimination was precisely the same as in the Thompson case last cited. The Lord Chancellor (Cairns) said: "The question in cases like the present

must always be simply this: Is the plaintiff in the action obliged to pay one sort of remuneration for services which the railway company performs for him, while the company performs the same services for other traders, either for less remuneration, or for no remuneration at all." \* \* \* \*

"The railway company is, in the collecting, loading and delivering of goods, performing identically the same service for the plaintiff in this action as the two other firms of brewers whose names have been referred to."

"Now, as a matter of policy and expediency, it may well be that the appellants have good reasons for treating those other firms in the way they do; it may be, that if they do not do that, those other firms, from the natural advantages of the situation which they have been able to occupy, will send their goods by another railway, and not by the railway of appellants. But with those considerations the plaintiff in the action has nothing whatever to do. That is exactly one of those things which Parliament has not left open to railway companies to judge of—whether in that way they will equalize their capacity for competing with other lines or not. The one right, to my mind, the clear and undoubted right, of a public trader is to see that he is receiving from a railway company equal treatment with other traders of the same kind, doing the same business, and supplying the same traffic. In my opinion, that is not the case with regard to this plaintiff, and therefore I think he is entitled to recover the moneys he has paid under protest."

It will be noticed that in the Evershed, as in the Thompson case, the railway company was discriminating in favor of certain competitive shippers against certain other competitive shippers at the same competitive point, where the services rendered by the railway com-

pany to the different shippers were precisely the same, and where they were rendered under precisely the same circumstances and conditions; and that it was with reference to that kind of discrimination that the Chancellor was speaking when he said that it was one of those things which Parliament *has not left open for railway companies to do*. And when he used the expression that railway companies cannot equalize their capacity for competing with other lines by discriminating between different shippers, he referred to discrimination between different competitive shippers at the same competitive point; and was not considering the right of a company to reduce rates at competitive points to meet competition with rival lines, where such competitive rates are offered equally and impartially to every one proposing to ship from such competitive points.

It will be seen by reference to the opinions in the Budd case, commented upon in Section 10 of this argument, that the Judges based their decisions in that case upon the decision in the Evershed case, and that two of the three Judges in the Budd case, seem to have followed the Evershed case rather reluctantly.

The difference between the Budd case and the Evershed case was simply this: That in the Budd case the railway company had attempted to give to certain local shippers, within a certain arbitrary six-mile radius, the benefit of the competitive rates prevailing at Swansea proper, while it refused to allow those rates to other local shippers whose manufactories were located just outside of the arbitrary limit; whereas, in the Evershed case, the company was discriminating in favor of certain competitive shippers, against certain other competitive shippers, at the same competitive point, while the services rendered by the company to all the competitive

shippers were precisely the same, and rendered under precisely similar circumstances and conditions. A mere statement of the two cases is sufficient to show that neither the Budd case, nor the Evershed case, has any application to the question now presented by the Louisville & Nashville R. R. Co.

#### XIV.

In Section 4 of this argument I cited the English cases which, I think, show that under the "known and settled construction" of the English railway acts, transportation between competitive points is not conducted under "substantially similar circumstances and conditions" with traffic between non-competitive points; and in the succeeding sections, I have endeavored to show that the cases cited by me have not been overruled, or even questioned by the courts or railway commissioners of that country. I propose now to notice the American cases upon the circumstances and conditions under which competitive transportation is conducted.

The Constitution of Colorado provides that "all individuals, associations, and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges, or facilities of transportation of freight or passengers within the State," etc.

The Atchison, Topeka & Santa Fe R. R. Co. (hereinafter called the "Atchison" R. R. Co.) operated a railroad from Kansas City to Pueblo, about 634 miles. When its line first reached Pueblo, it had no connection of its own with Denver. The Denver & Rio Grande R. R. (hereinafter called the "Rio Grande" R. R.) was built and running between Denver and Pueblo, but the gauge of its track was different from that of the

"Atchison" R. R. Other companies occupying different routes, had at the time, substantially the control of the transportation of passengers and freight, between the Missouri River and Denver. The "Atchison" R. R. Co. being desirous of competing for this business, entered into an arrangement, as early as 1879, with the "Rio Grande" R. R. Co. for the formation of a through line of transportation for that purpose.

By this arrangement, a third rail was to be put down on the track of the "Rio Grande" Road, so as to admit of the passage of cars continuously over both roads, and terms were agreed upon for doing business, and for the division of rates. The object of the parties was to establish a new line, which could be worked with rapidity and economy in competition with the old ones. In the division of rates the "Rio Grande" Company was allowed compensation at the rate of a mile and a half for every mile of actual haul.

As the distance from the Missouri River to Pueblo by this route, was about the same as to Denver by the competing routes, the through rates over this line to and from Denver, were usually made about the same as rates to and from Pueblo. This was necessary to compete with other lines for Denver business. Afterwards an agreement was made between the "Atchison" R. R. Co. and its competitors, by which rates were established between Denver and the Missouri River, and arrangements made for a division of business among those companies, and for the regulation of their conduct towards each other, with a view to avoiding competition between themselves, or from others.

In 1882 the Denver & New Orleans R. R. Co. (hereinafter called the "New Orleans" R. R. Co.) completed its road between Denver & Pueblo, and requested of the



"Atchison" R. R. Co. that it be placed upon an equal footing with the "Rio Grande" R. R. Co. in all traffic over the "Atchison" R. R., for which the "New Orleans" R. R. Co. and the "Rio Grande" R. R. Co. were competitors.

This request was refused and the "Atchison" R. R. Co. continued its through business with the "Rio Grande" R. R. Co. as before, and declined to deliver freights or passengers at the Junction of the "New Orleans" R. R., or to give or take through bills of lading, or to sell or receive through tickets, or to check baggage over that line. All passengers or freight coming from, or destined for that line, were taken or delivered at the regular depot of the "Atchison" Company in Pueblo, *and the prices charged were according to the regular rates to and from that point, which were more than the "Atchison" Company received on a division of through rates to and from Denver under its arrangement with the "Rio Grande" Company.*

The "New Orleans" Company filed a bill against the "Atchison" Company, the general purpose of which was to compel the "Atchison" Company to unite with the "New Orleans" Company, in forming a through line of railroad transportation to and from Denver over the "New Orleans" Road, with all the privileges as to exchange of business, *division of rates*, sale of tickets, issue of bills of lading, checking of baggage, etc., that were, or might be granted to the "Rio Grande" R. R. Co., or to any other railroad company competing with the "New Orleans" Company for Denver business. (See 110 U. S., 668, 669, 670, 671, *A. T. & S. R'y vs. D. & N. O. R'y.*)

It will be seen that the case just cited bears a very close resemblance to the case of *Napier vs. G. & S. W.*

*R'y Co.*, 1 Nev. & Mac., 292, cited in the fourth section of this argument; and the United States Supreme Court, though not referring to that case, refused the relief sought by the complainant, as was done by the Court in Napier's case. The United States Supreme Court, while holding that "both by the common law, and by the Constitution of Colorado, a railroad company is prohibited from discriminating unreasonably in favor of, or against another company seeking to do business on its road" (page 682), said that it did not follow that a company "must under all circumstances give one connecting road the same facilities, and the *same rates* that it does to another, with which it has entered into contract relations for a continuous through line, and arranged facilities accordingly." (Page 685.) And as to the rates insisted upon by the "New Orleans" Company the Court used this language (pages 683-4): "That the price must be reasonable is conceded, and it is no doubt true that in determining what is reasonable, "the prices charged for business coming from, or going to other roads connecting at Pueblo, may be taken into consideration. But the relation of the "New Orleans" Company to the "Atchison" Company *is that of a Pueblo customer*, and it does not necessarily follow that the price which the "Atchison" Company gets for transporting to and from Pueblo, on a division of through rates among the component companies of a through line, to Denver, must settle the Pueblo local rates. It may be that the local rates to and from Pueblo are too high, and that they ought to be reduced, but that is an entirely different question from a division of through rates. There is no complaint of discrimination against the "New Orleans" Company in respect to the regular Pueblo rates, *neither is there any thing, except the through rates, to show that the local rates are too high.*

The bill does not seek to reduce the local rates, but only to get their company put into the same position as the "Rio Grande" Company on a division of through rates. This cannot be done until it is shown that the relative situation of the two companies with the "Atchison" Company, both as to the kind of service, and as to the conditions under which it is to be performed, are substantially the same, so that what is reasonable for one must necessarily be reasonable for the other.

When a business connection shall be established between the "New Orleans" Company and the "Atchison" Company at their junction, and a continuous line formed, different questions may arise; but so long as it is now, we cannot say that as a matter of law, the prices charged by the "Atchison" Company for the transportation of persons and property coming from or going to the "New Orleans" Road, must necessarily be the same as are fixed for the continuous line over the "Rio Grande" Railroad."

It will be seen that the opinion of the Court establishes the following propositions:

First—That in order to meet competition, two or more railroad companies may by voluntary agreement form a through line, and that the through rates charged over such line, may be less than the sum of the locals of the roads forming the line.

Second—that the proportion of the through rate which each of the companies receives, may lawfully be less than the local rates charged by such company at the time for transportation over the entire length of its own road; and,

Third—That freight tendered to one of the companies at an intermediate point on the through line, though such point may be one of the termini of the road of

such company, and though such freight may be transported by said company over its entire line, is not transported by it under substantially the same circumstances and conditions as other freight transported by it passing between competitive points, notwithstanding the freight in both cases may be carried over the entire length of such company's road, in the same cars, and in the same trains.

In other words, notwithstanding the *service rendered by the company* may be the same in both cases, the fact of competition in the one case, and not in the other, creates a substantial dissimilarity in the circumstances and conditions of the transportation; and this is precisely the point for which the Louisville & Nashville R. R. Co. is now contending.

If freight passing from New York to New Orleans, *via* Louisville, and which is carried in the same cars and trains from Louisville to New Orleans, with other freight of the same class originating at Louisville, is not carried under substantially similar circumstances and conditions; then freight originating at Louisville and carried from Louisville to New Orleans, though it may be carried in the same cars and trains with freight of the same class originating at Rowlett, is not carried under substantially similar circumstances and conditions with the freight originating at Rowlett; it being remembered that Rowlett is a local station a short distance south of Louisville.

If the Louisville & Nashville R. R. Co. may lawfully charge more from Louisville to New Orleans on freight originating at Louisville, than its proportion of the competitive through rate from New York to New Orleans on that class of freight, so it may charge more from Rowlett to New Orleans on freight originating at Rowlett, than the

proportion which the part of the road between Rowlett and New Orleans, bears to the entire length of the road; and the reason is precisely the same in both cases, viz.: that the freight in the one case is not transported under substantially similar circumstances and conditions as the freight in the other.

The sixth section of the act of Congress, passed July 1st, 1862, relative to the Union Pacific R. R. Co., provides that the Government shall at all times have the preference in the use of the railroad "at fair and reasonable rates of compensation, not to exceed the amount paid by private parties *for the same kind of service*. (See 104 U.S., 663, U. P. R. R. *vs.* U. S.) The words, for the same kind of service, evidently mean for services rendered "*under substantially similar circumstances and conditions*."

In a case between the same parties, reported in 117 U. S., page 362, it appeared that the company's uniform rate for the transportation of local passengers between Council Bluffs and Ogden, when passengers purchased tickets at either of those places, was \$78.50 each; but, by contracts with connecting railroad companies who sold through tickets at reduced rates from New York, San Francisco, and other places over their own, and the Union Pacific R. R., the latter company received, as its proportion of the through ticket, only \$54 for each through passenger carried between Council Bluffs and Ogden. Of course the reduced rates at which the through tickets were sold, were the result of competition by other lines, at the points between which the through tickets were sold.

The contention on the part of the United States (see page 363) was, that local passengers carried on its account between Council Bluffs and Ogden, should be car-

ried at the same rates as were charged for through passengers passing between those points as part of a journey over the whole line, and the question of law involved in that contention as stated by the Supreme Court was, "whether the service rendered in transporting a local passenger between two points is, in law, identical with that rendered in transporting a through passenger between the same points as part of the transit over the distance of the whole line," and the Court held that the service in the two cases was not identical.

It does not appear in the report, but it was doubtless the fact, that the local passengers were carried by the Union Pacific R. R. in the same trains, and in the class of cars, as the through passengers. Or, in other words, that the service rendered by the company was precisely the same so far as cost, risk, etc., were concerned in the case of a through passenger, as in the case of a local passenger, and the only reason that the transportation of the through passenger, was not done under substantially similar circumstances and conditions as the transportation of the local passengers was, that in the former case competition controlled the rate for transportation, while in the other it did not.

It will be noticed that the case last cited bears a strong resemblance to the English cases of the *Attorney General vs. B. & D. J. R'y Co.*, 2 Eng. R'y and Canal Cases, page 124; *Hozier vs. Caledonian R'y Co.*, 1 Nev. & Mac., page 28, and *Jones vs. E. C. R'y Co.*, 1 Nev. & Mac., page 45, cited in the fourth section of this argument, and in all three of which it was held, in effect, that non-competitive traffic was not conducted under the same circumstances as competitive traffic.

In the case of *Ragan & Buffet vs. Aiken*, 9th Lea (Tenn.), 619, it appeared that the defendant was the

owner of a railroad about fifteen miles long, running from Rogersville to a Junction with the E. T., V. & G. R. R. The complainants were merchants at Rogersville, and they alleged that they had been required by the defendant to pay freight at a rate of from twenty to twenty-five cents per hundred pounds, the gross amount of their payments aggregating about four thousand dollars; that the defendant, as an inducement to other merchants in Lee County, Virginia, and Hancock County, Tennessee, to have their goods shipped to Rogersville, over defendant's railroad, instead of by other routes, had entered into contracts not to charge them exceeding fifteen cents per hundred pounds on similar freights; and complainants insisted that such discrimination was illegal. The Supreme Court of Tennessee (see page 622), said: "That in determining whether a company has given an undue preference to a particular person, the Court may look to the interests of the company," citing and approving the case of *Ransome vs. E. C. R'y Co.*, 1 C. B. U. S., 437, cited in the second section of this argument. The Court further said that: "If the charge on the goods of the party complaining is reasonable, and such as the company would be required to adhere to *as to all persons in like condition*, it may nevertheless lower the charge of another person, if it be to the advantage of the company, not inconsistent with the public interest, and based on a sufficient reason. It is obvious that the intention of the defendant, in this instance, was not to discriminate against the complainants in favor of any person of the same place, and *in the same condition*. His object was to get business for his road from persons at a distance from its terminus, which otherwise would reach its destination by a different route. Under these circumstances we cannot see that the contracts complained of are against

public policy, or that complainants have been damaged, if the charges on their goods were reasonable."

It is submitted that the case last cited is a direct authority for the position, that competitive traffic is not "in the same condition" as traffic that is not competitive; or, in other words, that the two traffics are not conducted under substantially similar circumstances and conditions.

In the case of *Ex parte Koehler*, reported in 21st Am. and Eng. R. R. Cases, 52, Deady, Judge, in considering the Oregon Statute, which provides that no greater rates shall be charged for carrying similar property a short haul than a long one in the same direction, said: "The Act prescribes a reasonable rate for carrying freight between Corvallis and Portland, or from either, to points intermediate thereto. But Corvallis is on the river, and has the advantage of water transportation for some months in the year. The carriage of goods by water usually costs less than by land, and as water crafts are allowed to carry at a rate less than a maximum fixed by the railway, they will get all the freight from this point, unless the latter is allowed to compete for it. But, if to do this, it must adopt the water rate for all the points intermediate between Portland and Corvallis, where there is no such competition, it is, in effect, required to carry freight to and from such points at a less rate than that which the Legislature has declared to be reasonable, or else give up the business at Corvallis altogether. \* \* \* \* It is not the fault or contrivance of the railway that compels this discrimination, but it is the necessary result of circumstances altogether beyond its control. It is not done wantonly, for the purpose of putting the one place up, or the other down, but only to maintain its business against



rival and competing lines of transportation. In other words, the matter, so far as the railway is concerned, resolves itself into a choice of evils. It must either compete with the boats during the season of water transportation, and carry freight below what the Legislature declared to be a reasonable rate, or abandon the field and let its road go to rust. Nor can the shipper at the non-competing point, or over the short haul, complain so long as his goods are carried at a reasonable rate. It is not the fault of the railway that the shipper who does business at a competing point, has the advantage of it. It is a natural advantage which he (the local shipper), must submit to, unless the Legislature will undertake to equalize the matter, by prohibiting the carriage of goods by water for a less rate than by rail."

The opinion of Judge Deady states clearly and forcibly, the substantial difference that exists between the circumstances and conditions of competitive traffic, and those of non-competitive traffic. Where the traffic is non-competitive, the railroad company can, according to the English cases, charge any rate that is reasonable, though according to some of the American cases, the rate must be not only reasonable, but equal and impartial. But where the traffic is competitive, the railroad company is forced to "accept such rates as competition has established, or abandon the field and let its road go to rust." In the one case the company is free to act within the limits of reasonable and equal rates. In the other case it is forced to accept whatever may be offered.

To say that traffic between competitive points, is conducted under substantially similar circumstances and conditions with traffic conducted between points that are non-competitive, is, to my mind, as absurd as to say that a slave is under substantially similar circum-

stances and conditions with a freeman. See, also, *In re T. & P. R. Co.*, 1st Interstate Commerce Reports, pages 30, 31.

## XV.

I would like to notice in detail such of the American cases as may possibly be cited against me, but the length of this argument will prevent it. All of such American cases, so far as I have seen, fall under some one of the classes into which I have divided the English cases, and upon which I have commented in sections five to thirteen of this argument.

If I have succeeded in showing that none of the English cases classified in those sections, militate against the position I have assumed, the same course of reasoning will dispose of the American cases, and render a detailed examination of them unnecessary.

I have been unable to find any case, either English or American, in which it has been decided, or even intimated, that traffic conducted between competitive points, is conducted under substantially similar circumstances and conditions with traffic between points that are not competitive.

The case of *C. & A. R. R. Co. vs. People*, 67 Ill., 13, also reported in 5 Am. Corp. Cas., page 196, has been cited as deciding that competition does not create a substantial dissimilarity in the circumstances and conditions of transportation; but no such question was involved in that case, and therefore it could not have been decided.

The statute of Illinois provided that "no railroad corporation in this State shall charge a larger compensation for the transportation of freight over any distance than it is charging at the same time for freight of the same class over a less distance."

Chief Justice Lawrence states the precise question, and the only question, that was before the court, as follows: "The question involved in this record is the *constitutionality* of the act of the Legislature under which the information was filed." 5 Am. Corp. Cas., 198.

Of course, anything that may have been said with reference to the effect of competition upon the circumstances and conditions of traffic, in the course of an opinion involving only the constitutionality of the statute, was mere *obiter*.

The Illinois statute was an absolute prohibition against charging more for a shorter than a longer distance, and of course, under such a statute, the effect of competition as a fact, could cut no figure whatever. Any averment, or proof as to the effect of competition upon transportation, would have been wholly irrelevant. Congress refused to adopt any such absolute prohibition as is contained in the Illinois statute, and instead thereof, prohibited charging more for shorter than for longer distances, only where the transportation is conducted "under substantially similar circumstances and conditions."

It is true that the Chief Justice does say that there must be something more than the mere fact that there is competition at one point, and not at the other, to justify the company in charging more for a shorter than for a longer distance; but he was speaking with the Illinois statute before him, which precluded altogether, the consideration of the effect of competition. He might have gone much farther than he did, and have said that under the language of that statute, neither competition nor any other fact, would justify a company in charging more for a shorter than a longer haul.

That His Honor did not intend to say that competition does not constitute a substantial dissimilarity in the circumstances and conditions of traffic, is proved by an illustration which he uses when comparing the rates at Bloomington, a competitive point, with the rates at Lexington, a non-competitive point. He says: "The rates to Bloomington would be established under the influence of a fair competition, which, by the ordinary laws that govern commerce, might be relied upon as establishing a rate not unreasonably low. At Lexington, the rates would be established by the uncontrolled discretion of the company, and it should not cause surprise, if they were fixed unreasonably high." 5 Am. Corp. Cases, p. 203.

In other words, according to his Honor's statement, competition certainly does create a very substantial dissimilarity in the circumstances and conditions of traffic. If a railroad company has, as he assumes, an "uncontrolled discretion" at non-competitive points, and is absolutely controlled by competition at competitive points, the difference between the two cases, is precisely the difference between absolute freedom, and absolute slavery. His Honor, however, was mistaken in assuming that a railroad company has an "uncontrolled discretion" in fixing its rates at non-competitive points; for, he himself says, in another part of his opinion, that at common law the rates of a carrier must, at all times and at all places, be not only reasonable, in and of themselves, but open alike to every one, equally and impartially. It was probably the opinion of the Chief Justice that competition ought not to be allowed, as a matter of justice or policy, to be taken into consideration, in determining the circumstances and conditions of transportation. But we have nothing to do with the question of justice or policy, and his Honor's pri-

vate opinion upon that question may, or may not be correct.

The only question now under discussion, is whether competition, rightfully or wrongfully, justly or unjustly, creates a substantial dissimilarity in the circumstances and conditions of transportation. If it does, then the fourth section of the act of Congress does not apply, and the Honorable Commission will have nothing to do, but to dismiss our petition upon that ground.

## XVI.

If, however, the Commission should hold that competition does not constitute a substantial dissimilarity in the circumstances and conditions of transportation, and consequently that the fourth section of the act of Congress does apply, the question remains, whether the applicant in this case has presented any facts to justify the Commission in suspending the operation of that section so far as the applicant is concerned.

The fourth section provides, that in "special cases" and "after investigation," the Commission may authorize a common carrier "to charge less for longer than for shorter distances."

I do not understand that the phrase in "special cases" means that the applicant must present special or peculiar facts, differentiating its case from the cases of all other common carriers; but that the application must be special, particular, and certain in its form, as contradistinguished from vague, general, and indefinite.

I do not understand that the applicant's petition is to be dismissed, merely because it presents as grounds for relief, certain facts, which may also be presented with equal truth, by a large number of other common carriers. All that is required by the word, "special," is

that the petition shall state with certainty and clearness, the exact kind of traffic in regard to which the applicant desires to be relieved, and the precise facts it relies upon, as constituting a substantial dissimilarity between the circumstances and conditions of that traffic and other traffic in regard to which no such relief is asked.

The petition in this case does describe the kind of traffic in regard to which the applicant desires to be relieved, and it states the various cities and towns between which that traffic is conducted. It states not only that competition exists at those towns and cities, but it further states that the competitive traffic of the applicant bears but a small proportion to its non-competitive traffic; that if it is forced to abandon either its competitive or non-competitive traffic, it will necessarily abandon its competitive traffic, and that to abandon its competitive traffic will inflict a loss of about \$3,000,000 per annum upon the applicant, and seriously involve the applicant's solvency.

The further fact has been proven before the Commission, and probably would have been judicially noticed without proof, that the applicants's system of railways is located, for the most part, in States South of the Ohio River. Most of those States were devastated by the late civil war, and since the war they have been forced to change from agricultural, to mining and manufacturing industries. The latter are now in their infancy, and for their development need every facility in the way of transportation, that can possibly be afforded them. The territory, through which the applicant's lines of railway run, is, for the most part, but thinly settled, and the traffic upon those parts, as compared with the traffic of the trunk lines, and many other lines north of the Ohio

River, is comparatively light. If, therefore, the Commission should be of the opinion that the phrase "special cases" means that the applicant must present facts which differentiate its case from that of other railroad companies in general, the applicant in this case relies upon the considerations just mentioned, as reasons why the Honorable Commission should grant the relief sought, whether such relief may, or may not be necessary in the case of other railway companies in the United States. It is submitted, however, that the fact that other companies, however numerous they may be, are entitled to similar relief, ought not to prevent the applicant from obtaining relief, provided the special facts set forth in its application entitle it to such relief.

I have not the time left me in which to enlarge upon the special circumstances and conditions which the applicant has presented in its petition and proof as grounds for relief, and I leave them to your Honor's with entire confidence that they will receive the careful and intelligent consideration to which their importance entitles them.

Respectfully submitted,

ED. BAXTER,

*Solicitor for L. & N. R. R. Co.*





## ARGUMENT OF E. B. STAHLMAN

ON BEHALF OF THE LOUISVILLE & NASHVILLE RAILROAD,  
AND MEMBERS OF THE SOUTHERN RAILWAY  
AND STEAMSHIP ASSOCIATION.

FOR RELIEF FROM THE OPERATIONS OF THE FOURTH SECTION OF THE

**"ACT TO REGULATE COMMERCE."**

WASHINGTON, D. C. }  
Submitted May 27, 1887. }

*Mr. Chairman and Gentlemen :*

The pending question is one of the utmost importance, not only to the railroads but to the business interests of the entire South.

Whatever may be said of the relations that railroads sustain to the people elsewhere, in the South they are friendly, they are mutual. The railroads and the people are working together in an earnest effort to build up and develop the resources of that section.

In this view of the case, I have been amazed at the position taken by Maj. John C. Gault, who, as the General Manager of the Cincinnati, New Orleans & Texas Pacific Company, appeared before this honorable Commission a few days ago.

When a man essays to speak, and does speak, especially upon a question involving so much, his views become the object of favorable or adverse criticism. Maj. Gault has spoken; it is to his remarks that I desire to address myself for the present.

I have no feeling in this matter, Mr. Chairman; Maj. Gault is my warm personal friend. I respect his age, I respect his experience, but his vagaries, inconsistencies, and hidden motives I can not endorse or allow to pass unnoticed.

Maj. Gault informed the Commission at the outset that he "asked for relief only at points where there was water competition, and for no other reason, and that he did not believe in any other reason." He also stated that rates to and from Chattanooga were not influenced by water competition. It is clear, Mr. Chairman, that Mr. Gault entirely overlooked (I will not say concealed) the fact that all of the important trade centers of the West have water navigation via the Ohio, Mississippi, and Cumberland rivers to Nashville, which, with a short rail haul from Nashville to Chattanooga over a purely State road, practically fixes the rates for the all-rail lines, and that the Ohio, Mississippi, and Tennessee rivers via Johnsonville, Tenn., and Florence, Ala., with a short rail haul thence to Chattanooga may be and have been utilized for a like purpose.

Further on we are informed that the Cincinnati, New Orleans & Texas Pacific Company does not make the rates on its lines; that it has not the power; that

the Southern Railway and Steamship Association makes them, and that the plan of making these rates is vicious and stupid, and in the same connection we are told that (I quote Maj. Gault's language) "The rate on grain to Birmingham from Cincinnati is about twenty-six cents, and the rate from Birmingham to Tuscaloosa, only sixty miles further on, is practically double. I mean to say that this is a stupidity in making rates."

Now, Mr. Chairman, I desire to say, for the information of this honorable Commission, that this statement is unwarranted. I do not charge Mr. Gault with a desire to mislead the Commission, but the form in which he has put his statement is calculated to mislead you. The Southern Railway and Steamship Association does not make the rates to local stations. There is abundant proof of this in the testimony taken by the Commission at the different points in the South. The Association simply makes rates to terminal points, and there is nothing in the rules of the Association to prevent the Cincinnati, New Orleans & Texas Pacific from making a rate to Tuscaloosa, or any other local station on its line, as low as they are to Birmingham, if it sees fit to do so; and the diagram of rates to his local stations, which Maj. Gault says "looks like saw teeth, up and down," are not controlled by the Southern Railway and Steamship Association, but made to suit the pleasure of the management of the Cincinnati, New Orleans & Texas Pacific Company. Further on he informed the Commission that all freight shipped from Cincinnati to a point fifty miles this side of Atlanta pays first through rate to Atlanta and then local rate back. While the testimony of the experts before the Commission showed that the rates are based on the rates to Chattanooga, plus the Georgia Commission rates from Chattanooga, and that only one or two stations west of Atlanta are based on Atlanta, and only those for the reason that the Georgia Commission rates added to the Chattanooga rate would be higher than the rates based on Atlanta. Maj. Gault says a man living fifty miles out of Atlanta can do better in Atlanta than he can in Cincinnati or New York. This is a remarkable statement, in view of the fact that the rates to all intermediate points are never higher from New York or Cincinnati than a combination of rates on Atlanta would make. Maj. Gault must therefore have assumed that a merchant living within fifty miles of Atlanta, who is able to carry on a direct trade with Cincinnati and New York, would rather pay the Atlanta merchant a profit as a middle man than to go direct to Cincinnati or New York for his supplies. I insist that there is no adjustment of rates which will enable the Atlanta merchant to buy his goods in New York or Cincinnati and reship to intermediate points at less rates than the through rates from New York or Cincinnati direct to such intermediate points. Further on he informed the Commission that "we (his company) had prepared a tariff to conform to the law, and our President and Executive Committee had not only been willing to adopt it and to put the law into effect, but had been anxious to give it a fair trial." But when pushed on this question, he admits that he could not afford to enforce the law at points where there is water competition; and when further pressed admitted that water competition affected rates for a considerable distance in the interior.

Maj. Gault pretended that there was no relief needed except at points where

there was water competition, and that water competition was of no consequence any where except on the Ohio and Mississippi rivers. As he proceeded, however, the fact was developed that his line wanted relief at Monroe, located on the Ouachita River, at Shreveport, located on the Red River, and at Tuscaloosa, Ala., located on the Warrior River. Not only were those particular points involved in the competition of water, but the territory tributary to them for some distance. True, he sought to belittle the competition at Tuscaloosa by saying that they only had water for eight months in the year.

Commissioner Bragg: Do you know what the population of Tuscaloosa is?

Mr. Stahlman: I think it is in the neighborhood of twenty-five hundred or three thousand. I may be mistaken. It is quite an important and progressive point.

Commissioner Bragg: It is about five thousand.

Mr. Stahlman: It is larger than I supposed. I know that they are a progressive people. They have been urging us for years to build a railroad to their town. They have established iron and other manufacturing industries, and, with an investment of a few thousand dollars in steamboats, can fix the rates for Maj. Gault's railroad ten months in the year. They are doing so now with the boats they have.

Maj. Gault dwelt on the character of the competition between New Orleans and Cincinnati quite extensively; and, while at the outset he demanded that water was the only competitive force to be considered, he grew quite earnest in a discourse on commercial equalities and the competitive forces arising from competition between rival markets. He told the honorable Commissioners that the rate from New Orleans to Cincinnati on sugar and molasses could not be above a certain figure, not because there was competition by water, but because there was competition between the markets of Baltimore and New Orleans for the Cincinnati and Western trade. And, going on this hypothesis, he explained that while he could only get twenty cents from New Orleans to Cincinnati on sugar, because of the competition with Baltimore, he could get thirty-five cents from New Orleans to Tuscaloosa, considerably less than half the distance, because Baltimore could not lay it down in Tuscaloosa for less than thirty-five cents. Now I submit, Mr. Chairman and gentlemen, that commercial equalities or competition between markets being considered an important factor in controlling rates between New Orleans and Cincinnati, the same influences must be considered in fixing rates to and from other points, whether there be competition between water and rail lines or not. To illustrate: If, in fixing the rates on sugar from New Orleans to Cincinnati, the rate from Baltimore to Cincinnati is to be considered (and I freely admit that it should be), the rate on grain from St. Louis to Atlanta, Ga., must be considered in fixing the rates on grain from Cincinnati, Evansville, and Louisville, and other Western points to Atlanta, all being competitors for the trade of Atlanta; and upon the same principle the rates on Western produce from St. Louis to Augusta, Ga., should be considered in determining the rates from St. Louis to Atlanta, for the reason that Atlanta and Augusta compete for the same trade.

Maj. Gault says, further on, that he wants permission to make the rates to Vicksburg, Miss., less than to stations on the Vicksburg & Meridian road, and

at the same time informs you that he wants to make the rates to all points between Vicksburg and Meridian the same. This, of course, includes Jackson, Miss. (an intermediate point on their line), while in another portion of his testimony he insists that the rates to Jackson are affected by competition through New Orleans and Vicksburg.

He tells you that Meridian, Miss., ought to be considered an intermediate local point, but fails to inform the Commission that by having Meridian and Jackson made practically local points on interstate traffic, he will be able, through the city of Vicksburg, with his Vicksburg & Meridian line, to supply Jackson and Meridian and the interior of Mississippi with Western produce, to the exclusion of the all rail interstate lines running direct from the West.

He tells you in one instance that a diagram of rates to local stations on his lines "looks like saw-teeth, up and down," and in the next breath informs you that under the system of rates made by the Southern Railway and Steamship Association every local point in the South is really a competitive point; and that is why he objects to it.

He says he wishes the long and short haul clause enforced so that rates to all points may be progressive and relatively the same, and then insists that rates should be made practically on the mileage basis, according to distance.

I am not drawing any inferences, Mr. Chairman, I am stating Maj. Gault's position as I find it expressed by him in his testimony before the honorable Commission, and on this point of mileage rates I desire to call the attention of the Commission to an arbitration had about a year ago between the Louisville & Nashville and the Cincinnati, New Orleans & Texas Pacific companies, in which the distinguished chairman of this Commission officiated as arbitrator. He will remember the circumstances, and will bear me out in the statement I am about to make.

Commissioner Bragg: Are you referring to the case where there was a contest over the Wetumpka rates?

Mr. Stahlman: No, sir. I am referring to an arbitration which involved the question of a relative adjustment of rates from the West.

The Chairman: Yes, I remember that. You have very much the same sort of a question.

Mr. Stahlman: In that case the Cincinnati, New Orleans & Texas Pacific management, through Maj. Gault, insisted that distance was no factor in determining the rates of transportation, and that commercial equalities were the principles which should govern. In other words, although one city was further distant from points south than another, the rates of transportation should not therefore be higher; that no matter what the difference in distance might be between any two markets, both must be put on an equality, and in this matter he went to the extreme of insisting upon an adjustment which gave the more distant market the advantage over the nearer market.

He informs you that rates to Atlanta should not be any less than to intermediate points, and, so far as his line is concerned, he does not want to make higher rates to intermediate points than to Atlanta, but conceals the fact that this same ruling on business to Macon, Augusta, Columbia, Athens, and other cities, on business from the West would prove disastrous to the Southern roads,

and that the system he is willing to invoke to Atlanta on business from the West would prove disastrous to other lines on business from the East to Atlanta.

He informs the Commission that Birmingham need give herself no concern on the pig iron question, and if the long and short haul clause is enforced he will say to them, "Gentlemen, this price to Pittsburgh is like carrying coals to Newcastle," meaning, I presume, that they have no right to sell pig iron at Pittsburgh. He fails, however, to show that Birmingham has a large pig iron trade with New York, Philadelphia, and other points east, which is being carried at less rates than the rates to intermediate points. He also fails to tell the Commission what effect the long and short haul provision would have on the manufacturer of bar iron, stoves, and other articles upon which higher rates are charged for the shorter haul than for a longer; also, what effect the law would have on the general merchandise and produce business, which is now a large part of the business of Birmingham.

He admits that there has been an advance of rates north of the Ohio River since the Interstate Commerce Act was enforced, but attributes it to the stupidity of the railroad companies and not to the passage of the act. He says emphatically that he does not believe the iron interests of Birmingham need any relief, whereas, it was abundantly shown by the testimony of Mr. Bowron, Mr. Mack, and others, that the enforcement of the act by the lines north of the Ohio River had resulted in advancing rates very materially, and to a large extent paralyzed their business.

When asked if the large lumber industries in the South needed any relief, he answered, "No, sir; it is getting easier every year to sell Southern lumber in the Northern markets, and the lumber men as well as the pig iron men had nothing to worry about," entirely ignoring the fact that lumber was largely carried at less rates from far distant points in the South than from intermediate points, and that the rates on lumber, as shown by the testimony, had been advanced by all lines north of the Ohio River as soon as the act went into effect, and that its enforcement in the South would only serve to further cripple these industries; also that the Southern ports of Pensacola and Brunswick, in close proximity to the pine lumber districts, were active competitors for a large portion of this traffic.

He informed you that an interstate road, although competing with a State road which is not subject to the jurisdiction of the Interstate Commerce Act, would not be entitled to relief if there was no water in it, ignoring the fact that a number of State roads in Tennessee, Alabama, and Mississippi, bordering on rivers, were able to throw large volumes of traffic into Chatanooga, Birmingham, Meridian, Jackson, etc., to the detriment of the direct rail interstate roads. Evidently having in view the perfection of plans which would enable his Vicksburg and Meridian line as a purely State road to inaugurate a raid on the business of Mississippi and portions of Alabama to the exclusion of the direct interstate rail lines leading to and from the West, he admits that the cities of Birmingham, Atlanta, Montgomery, Augusta, and all like cities would not have the same chance to supply the people of the country that they now have, but consoles himself with the fact that the people now supplied by these interior centers would have the opportunity of trading direct with New York and other distant markets.

After testifying at great length, endeavoring to show that commercial centers should have no advantage over interior local towns, regardless of what they invested to give them competition, he gives emphasis to his views by saying "*I take the broad ground that there is no competition between railroads.*" A stirring piece of information to the people of Cincinnati, who invested \$20,000,000 in the construction of a railroad between Cincinnati and Chattanooga for the purpose of obtaining a competing railroad to the South! Stirring news indeed, Mr. Chairman, coming as it does from the general manager of the railroad the people of Cincinnati built! It is equivalent to saying to them that this large sum of money was spent in vain, and that the construction of their road entitles them to no greater benefits than those enjoyed by interior local towns.

There can be no mistaking his position in this matter. If it means any thing, it means that the only competition to which the city of Cincinnati is entitled is by reason of her water transportation facilities, and not by reason of any railroad facilities she may have.

Desiring to impress the honorable Commission with the importance of his views, he says: "I have been an officer of railroads thirty-one years; I was connected with the roads west of Chicago from 1859 until two or three years ago, and we never had any such system (meaning the Southern system of rates). We built railroads out in the country where there were no people living at all, where there was nothing but grass; but our rates were made so as to let every town have a fair show. I was on the Wabash road in the States of Illinois, Iowa, and Missouri. That road crosses the Chicago, Burlington & Quincy road in thirty-four places, and we made thirty-four pools at the junction points; we did not make our rates to these points much lower than to neighboring points in order to attract all the business there to be divided, but we made *them somewhat lower than they were on either side.* That is the way we did business there."

Mark the language, Mr. Chairman! Here are *new railroads going through a new country where there are no people living, where there was nothing but grass, and where these lines had thirty-four different pools in order to prevent competition, and yet they made the rates "somewhat lower at junction points than they were made on either side."* And this, Mr. Chairman, is the plan held up to show that the basis of adjusting rates in the South is both "vicious and stupid." We are told by this gentleman that it is all right to make the rates from *new railroad crossings in the West, where there were no people and nothing but grass, "some lower than from points on either side,"* but to adjust the rates to or from important commercial centers in the South, which existed before railroads were built, on practically the same basis, is a crime which ought not to be tolerated.

I shall deal with commercial centers in the South later on, and show under what influence they were created.

Maj. Gault expresses surprise at not seeing the officers of the Southern Railway and Steamship Association present to hear his testimony while he must have known that none of them were invited, and none of them advised as to when or where the testimony on behalf of the Queen and Crescent route would be taken, and none of them should probably know to-day that the evidence had

been taken but for dispatches through the press, several days ago, announcing the fact.

It will be gratifying intelligence to the railway managers of the South to learn that the promise which Maj. Gault says he made "not to antagonize their petition at all," has been faithfully kept, and they will be especially gratified, after being charged with *stupid and vicious practices*, to learn that in his judgment "*there is no doubt but that the railroad management of the South has been wise.*" I think, Mr. Chairman, we can all understand, in view of what has been said, why the gentleman in closing turned to the reporters and said: "*I have great respect for the newspaper men, but don't want the newspapers to have all my testimony printed.*"

Now, Mr. Chairman, I have dealt quite freely, and I trust gently, with the vagaries and inconsistencies embodied in the testimony of this distinguished gentleman. But I must beg the indulgence of this honorable Commission a little further. It is well known by the railroad managers of the South that whatever the Louisville & Nashville Railroad deems for the best interest of the railroad and business interests of the South the management of the Cincinnati, New Orleans & Texas Pacific Company is sure to antagonize. This, in my judgment, would have been quite sufficient to incur opposition from that quarter in the absence of any other consideration.

But there is some "method in the madness" of this gentleman, which I have already alluded to in part, and which I deem it my duty to explain at greater length. To illustrate: The two competing lines between Cincinnati and Chattanooga are the Louisville & Nashville, via Nashville, four hundred and forty-six miles in length, and the Cincinnati, New Orleans & Texas Pacific, three hundred and thirty-six miles in length. The former has fifteen or more important towns on its line between Cincinnati and Chattanooga with a large local traffic; the latter has on its line only one or two towns of importance.

The Cincinnati, New Orleans & Texas Pacific Company's route has one hundred and ten miles less local territory than the Louisville & Nashville on which to reduce its intermediate rates. Therefore the enforcement of the fourth section would compel the Louisville & Nashville to reduce its rates on a hundred and ten miles more territory, with a large local traffic at least two hundred per cent greater than the local traffic of the Cincinnati, New Orleans & Texas Pacific, or withdraw from competitive business between Cincinnati and Chattanooga.

The management of the Cincinnati, New Orleans & Texas Pacific Company believes the latter course would be adopted, and I have no hesitation in saying that such would be the case, certainly on all classes of traffic moved between intermediate points and upon which local rates would have to be reduced if the road continued to carry competitive traffic. The same may be said of traffic between Lexington and Chattanooga, for which both lines compete. The difference in the distances being as great as between Cincinnati and Chattanooga.

The same may be said of the traffic between Lexington and Cincinnati. The distance between Lexington and Cincinnati via the Cincinnati, New Orleans & Texas Pacific road being seventy-nine miles, while the distance via the

Louisville & Nashville is one hundred and fifty-two miles. Both of these lines are active competitors, and notwithstanding the Louisville & Nashville has the longer line it carries a large percentage of this traffic. The Louisville & Nashville can not continue to compete for this traffic under the rigid enforcement of the act, to do so would necessitate a reduction of its local rates for one hundred and fifty-two miles against a reduction on the part of the Cincinnati, New Orleans & Texas Pacific road of only seventy-nine miles. The Louisville & Nashville Company's only recourse would be to establish a delivery and receiving depot at Newport for Cincinnati business, and this, coupled with its disadvantage in being the longer line, would practically force it out of the business.

I have already alluded to the advantages the enforcement of the law would give to the Cincinnati, New Orleans & Texas Pacific road on business through Vicksburg, but I think it well to refer to this again. The line from Vicksburg to Meridian, although a part of the Cincinnati, New Orleans & Texas Pacific system, can be handled as a purely State road. The Cincinnati, New Orleans & Texas Pacific management has, by all sorts of devices and manipulations, endeavored to make the city of Vicksburg a leading distributing market for Western produce to the interior of Mississippi and Alabama. The management of that road recognizes the fact that Western produce, such as corn, flour, hay, provisions, etc., are cheaper in Kansas, Missouri, and Southern Illinois than in Ohio and Indiana; that the city of Cincinnati can hardly hope to compete successfully with Kansas City, St. Louis, Evansville, Cairo, and other trade centers located in the immediate vicinity where the Western produce is grown. The rail lines leading from Kansas City, St. Louis, Cairo, and Evansville direct have been able to control a large proportion of the Western-produce trade of the South. The Cincinnati, New Orleans & Texas Pacific management hopes to divert this trade from the direct rail lines by having Western produce floated down the Ohio and Mississippi rivers on barges and steamboats, at nominal rates, to Vicksburg; and, by opening up that city as an important trade center for the distribution of Western produce, to practically control this business. I hope I have made myself clear. It is that the management of the Cincinnati, New Orleans & Texas Pacific road, having but one Western terminus—to wit, Cincinnati—and realizing that it can not draw the produce from the cheap producing sections of Kansas and Missouri and Southern Illinois a long distance, through Cincinnati, against the Louisville & Nashville, Nashville, Chattanooga & St. Louis, and Memphis & Charleston railroads, which have direct rail lines through St. Louis, Evansville, Cairo, Columbus, Ky., and Memphis, Tenn., is seeking, through the medium of nominal rates, by steamers and barges down the Mississippi and Ohio rivers, to make the city of Vicksburg the leading distributing center, and thus secure this large traffic over its Vicksburg and Meridian line.

The Commission will bear in mind that the city of Vicksburg has but one railroad leading into the interior of the South, and that is the Vicksburg & Meridian, a part of the Cincinnati, New Orleans & Texas Pacific system, which has nothing to lose and much to gain by the transfer of this large trade to the city of Vicksburg.

Up to this time, with the long and short haul provision out of the way, we



have been in a position to say, "You can have from Vicksburg just and fair rates as compared with the rates from other points, but we shall not allow you to dictate what the rates from Vicksburg shall be, and at the same time fix them in such a way as to preclude the direct rail lines which are largely interested in this traffic from doing business in that section of the country. The contest on this question has been going on for years, and the same question was up before the distinguished chairman of this Commission, "What the rates should be from Vicksburg, from Memphis, from New Orleans, from Louisville, from Cincinnati, etc., in comparison with the rates from other railroad points."

This is the gist of it, and the reasons why Maj. Gault insists upon the enforcement of the fourth section. He wants to tie our hands so that he may be free to do as he pleases, for the purpose of controlling the Mississippi and a large portion of the Alabama traffic through Vicksburg. I do not believe that the Interstate Commerce Act was designed for such a purpose. I do not believe that the framers of the act intended that the law should be enforced so as to prevent rail lines from competing one with the other, or that it was designed to throttle one line in the interest of another, or to throttle one rail line or two or three rail lines in the interests of the water crafts.

#### APPLICATION OF THE LOUISVILLE & NASHVILLE RAILROAD.

I shall now, Mr. Chairman, proceed with the consideration of the main question.

The application of the Louisville & Nashville Railroad Company for relief from the operations of the fourth section of the act known as "An Act to Regulate Commerce," quite clearly and specifically sets forth the territory in the transportation of property to and from which relief is sought.

Concisely put, this application embraces transportation of property to, from, and through the following points, to wit:

Cincinnati, O., Newport, Ky., Lexington, Ky., Frankfort, Ky., Louisville, Ky., Owensboro, Ky., Henderson, Ky., St. Louis, Mo., East St. Louis, Ill., Shawneetown, Ill., Evansville, Ind., Clarksville, Tenn., Nashville, Tenn., Memphis, Tenn., Birmingham, Ala., Montgomery, Ala., Selma, Ala., Mobile, Ala., Pensacola, Fla., and New Orleans, La.

The transportation facilities of the Ohio and Mississippi river cities and the Gulf ports are so well known that it is not necessary to refer to them except in a general way.

#### OHIO AND MISSISSIPPI RIVER CITIES.

The city of Cincinnati, located on the Ohio River, has the following lines of steamers plying southward:

The United States Mail Line, daily, between Cincinnati and Louisville.

The Cincinnati & Memphis Packet Company, composed of six steamers, between Cincinnati & Memphis.

The Cincinnati & New Orleans Packet Company, composed of six steamers, between Cincinnati and New Orleans.

In addition to these regular lines there are a number of steamers plying between Cincinnati and various points which have no connection with the lines named. It is hardly necessary to say that these lines and independent outside crafts afford active competition to the rail lines on all traffic to and from Cincinnati destined for important points located on the Ohio, Mississippi, and tributary rivers and Gulf ports.

The city of Newport, Ky., on the opposite side of the Ohio River from Cincinnati, enjoys like advantages.

The city of Louisville enjoys the same advantages with the addition of a line of steamers between Louisville and Henderson, Ky.

The cities of Owensboro and Henderson, Ky., have all the benefits enjoyed by the city of Louisville.

The cities of Evansville, Ind., and Shawneetown, Ill., enjoy like advantages.

The cities of East St. Louis, Ill., and St. Louis, Mo., have water transportation facilities consisting of extensive lines of steamers and barges plying between St. Louis, Memphis, Vicksburg, and New Orleans.

The city of Memphis, Tenn., enjoys like advantages.

The city of New Orleans has all the benefits accruing to her location at the mouth of the Mississippi River.

The cities of Pensacola, Fla., and Mobile, Ala., have direct communication with steamers on the Mississippi River, both by short rail haul and by Gulf steamers and schooners plying between New Orleans, Mobile, and Pensacola.

#### FRANKFORT, KY.

The city of Frankfort, located on the Kentucky River, a navigable stream, has the advantage of river navigation by steamboats plying on that river between Frankfort and Carrollton, connecting at that point with the Ohio River steamers in both directions; \$762,500 has been appropriated by Congress for the improvement of the Kentucky River.

The Louisville, Cincinnati & Lexington Railroad, now a part of the Louisville & Nashville system, extending from Frankfort to Cincinnati, a distance of one hundred and twenty-two miles, and from Frankfort to Louisville, a distance of sixty miles, was completed in 1869. The steamboats on the Kentucky River absolutely control the rates on traffic to and from Frankfort.

This city has contributed a large sum of money for the construction of this railroad, and to compel the road to withdraw from competition for the traffic to and from Frankfort would in a large measure deprive that city of the benefits which she hoped to derive from the construction of the line, and entail a loss upon the Louisville & Nashville Company to the extent of the revenue arising from such traffic.

#### NASHVILLE, TENN.

This city is located on the Cumberland River, a stream which is navigable for nine months in the year with steamers of four to eight hundred tons capacity, plying between Nashville, Evansville, Cairo, and connecting at the latter point with the Ohio and Mississippi river steamers, also with the rail lines centering at Cairo and Evansville. She also has a line of boats on the Upper Cumber-

land River, connecting at Port Burnside with the Cincinnati, New Orleans & Texas Pacific Railroad.

The city of Nashville was a commercial distributing center for a large territory, and furnished a market for the produce of that territory for many years before any railroads were constructed. There were large wholesale jobbing houses at Nashville, and quite large fortunes were made for that day and time in the jobbing trade of that city. The county, municipality, and the citizens subscribed large sums of money for the construction of the railroads which centered at that point.

The first railroad built was the Nashville & Chattanooga, extending from Chattanooga to Nashville, completed in 1854. The second, the Louisville & Nashville, extending from Louisville to Nashville, completed in 1859.

The third, the Nashville & Northwestern, extending from Hickman, Ky., on the Mississippi River to Nashville, completed in 1869.

The fourth, the Tennessee & Pacific, extending from Lebanon Tenn., to Nashville, completed in 1870.

The fifth, the Edgefield & Kentucky, now known as the Henderson Division of the Louisville & Nashville system, extending from Evansville, Ind., to Nashville, completed in 1872.

As unreasonable as it may seem, there are persons residing in Nashville today who claim that the city would have fared better if no railroads had ever been built; and that Nashville was more prosperous before she had any railroads than she is now. I do not of course concur in this view of the case, but I am free to say, located as the city is on a navigable stream, that she enjoyed advantages relatively as great before railroads were constructed as she has enjoyed since, and that local and intermediate points through the State of Tennessee reached by the different railroads of the State, have been more benefited relatively by railroad construction than the city of Nashville. In this view of the case I submit if it would be fair to enforce an adjustment of rates which would practically deprive the city of Nashville of the natural advantages she possesses. In other words, would it not be eminently unjust to take from her the advantages which nature has bestowed, and by artificial means, at the expense of persons who invested their money in railroad enterprises, transfer them to other less favored localities.

#### CLARKSVILLE, TENN.

This city is located on the Cumberland River, and has the advantage of two lines of steamers plying between Clarksville and Cairo and Evansville, connecting at those points with Ohio and Mississippi river steamboats as well as rail lines centering at Cairo and Evansville. For many years Clarksville has been a commercial and distributing center. The city ranks as the second largest leaf tobacco market in the United States. There are a number of jobbing houses in the city representing various branches of trade.

The people of Clarksville subscribed about a half million dollars to secure railroad facilities. The Memphis, Clarksville & Louisville Railroad, now a part of the Louisville & Nashville system, was chartered in 1852, and completed in 1860.

A road is being constructed from Clarksville to Princeton, Ky., connecting at Princeton with the Newport News & Mississippi Valley system, which will be completed in a few months. The Cumberland River, navigable the year round up to Clarksville, is the factor in the adjustment of rates to and from that city. The testimony of T. G. Ryman, F. P. Gracey, and M. H. Clark, abundantly shows that the Cumberland River fixes the rates to and from Clarksville.

The people of that city had excellent transportation facilities before any railroads were built. The rates of transportation to and from Clarksville by rail can not be advanced without transferring the city's large business to the river lines. Nature has done much for the city, which Congress has materially aided by appropriations aggregating \$803,000, for the improvement of the Cumberland River. The rail lines have not made Clarksville a commercial center; they accepted the situation as they found it, which they could not have ignored if they would. As the leaf-tobacco traffic from intermediate stations is very large, the Louisville & Nashville can not afford to reduce its local rates to correspond with rates fixed by water transportation from Clarksville.

#### MONTGOMERY, ALA.

The city of Montgomery is located on the Alabama River, a navigable stream. Congress has appropriated \$145,000 for the purpose of facilitating navigation on this river. Like all other points similarly situated, this city was a commercial trade center before railroads were built.

The first railroad built into this city was the Montgomery & West Point, extending from Montgomery to West Point, Ga., completed in 1854.

The second, the Mobile & Montgomery, extending from Montgomery to Mobile, completed in 1868.

The third, the Western, of Alabama, extending from Selma to Montgomery, completed in 1870.

The fourth, the Montgomery & Eufaula, now a part of the Central of Georgia system, extending from Montgomery to Eufaula, Ala., completed in 1870.

The fifth, the South & North, of Alabama, extending from Montgomery to Decatur, Ala., completed by the Louisville & Nashville Company in 1872.

The sixth, the Montgomery & Florida, projected to run from Montgomery to Rutledge, Ala., a distance of fifty miles; twenty miles completed in 1882.

This city has had accorded to it such rates of transportation as her geographical location and river transportation advantages clearly demanded.

Although this has given to Montgomery rates considerably less than those enjoyed by intermediate points, the business interests of that city have not been satisfied, and have during the past year organized a company, known as the Montgomery Trade Company, which company has established a regular line of steamers on the Alabama River, to run between Montgomery and Mobile, in the interest of the former city. This line of steamers is run independent of the line which has been occupying the river for many years, and has added very materially to the competitive forces at Montgomery. The testimony in the investigation throughout shows that Western produce and merchandise of all kinds is going into Montgomery by river at less rates than those fixed by the all-rail lines.

## SELMA, ALA.

The city of Selma is located on the Alabama River, and was also a commercial trade center before any railroads were built.

The first railroad built into this city was the Selma & Meridian, now a part of the East Tennessee, Virginia & Georgia system, extending from Selma to Meridian, Miss., completed in 1859.

The second, the New Orleans & Selma, projected to run from Selma to New Orleans, completed for twenty miles in 1869.

The third, the Western Railroad of Alabama, extending from Selma to Montgomery, completed in 1870.

The fourth, the Selma, Rome & Dalton, also now a part of the East Tennessee, Virginia & Georgia system, extending from Selma to Dalton, completed in 1870.

The fifth, the Pensacola & Selma, now a part of the Louisville & Nashville system, extending from Selma to Pineapple, completed in 1881.

The sixth, the Cincinnati, Selma & Mobile, extending from Selma to Akron, a point on the Cincinnati, New Orleans & Texas Pacific road, completed to Greensboro in 1872, and to Akron, seventy-one miles, in 1882.

The city has also had accorded to it such competitive rates as were forced upon the rail lines by its advantageous location on the Alabama River, and, like the city of Montgomery, her merchants have been asking additional concessions, and with a view to securing them have also formed an organization known as the "Selma Trade Company," which company has put on steamers between Selma and Mobile and thus added to the competitive forces with which the rail lines are obliged to contend.

## LEXINGTON, KY.

The city of Lexington is located in the center of the blue-grass region of Kentucky. While it has no direct water competition, this city is known to have been a commercial distributing center for a large section of Kentucky, which it is serving to-day.

The first railroad built into Lexington was constructed at the expense of the people of that city in 1832, extending from Lexington to Frankfort, Ky. The first locomotive run on this line failed after a trial of about six months to satisfactorily perform its functions. The road was then operated with horses until the latter part of 1834, when a more servicable engine was secured, and from that time to the present the road has been successfully operated as a steam railroad.

The second railroad, the Kentucky Central, extending from Lexington to Covington, Ky., opposite Cincinnati, a distance of ninety-eight miles, was completed in 1856. The Maysville branch of the Kentucky Central, extending from Lexington to Maysville on the Ohio River, a distance of sixty miles, was completed in 1859.

The third, the Louisville, Cincinnati & Lexington, now a part of the Louisville & Nashville, connecting the Lexington & Frankfort road with a direct line to Louisville, ninety-four miles, and a line to Cincinnati, one hundred and fifty-two miles, was completed in 1869.

The fourth, the Cincinnati Southern, now Cincinnati, New Orleans & Texas

Pacific, extending from Lexington to Cincinnati, seventy-nine miles, was completed in 1877, and the line Lexington to Chattanooga, distance two hundred and fifty-seven miles, was completed in 1880.

A remarkable fact developed in the testimony is that the city of Lexington, Ky., sold sugar and coffee to Cincinnati in early years. Lexington was a distributing point not only for Central Kentucky, but reached out to Ohio River points.

Before the canal was constructed around the Falls at Louisville steamers could only go up to Louisville, and there being no wagon roads around the Falls the traffic for points above Louisville, it is said, was wagoned through Kentucky by way of Lexington, which made Lexington a distributing center before Cincinnati had acquired any importance. Of course the people of Lexington feel proud of this fact. They have not grown as much as Cincinnati, but they feel proud of the fact that they once sold goods to Cincinnati. As shown by the testimony of Mr. LeCompt, at Memphis, the citizens of Lexington contributed over \$1,000,000 to secure railroad facilities.

The question is, should they and can they be deprived of them? I insist that they should not, and I will undertake to show why they can not.

The traffic from Louisville to Lexington, being within the State of Kentucky, is not subject to the Interstate Commerce Act. Traffic from Cincinnati, O., to Lexington, Ky., is subject to the act. The rates therefore can be so adjusted between Louisville and Lexington as to practically force the trade of Lexington to the city of Louisville. Of course the lines leading from Cincinnati will not assent to such an arrangement, and all they will have to do to hold their traffic will be to establish receiving and delivering depots for Lexington business on the Kentucky side of the river. The Kentucky Central road does not enter Cincinnati, and receives its Cincinnati freight at Newport anyway. The Cincinnati, New Orleans & Texas Pacific Company at present receives its Lexington freight at Cincinnati. It may and doubtless would determine to receive such freight at Ludlow on the Kentucky side of the river.

I am sure that it will not be claimed that the carters carrying freight between Cincinnati and Newport and Cincinnati and Ludlow are any part of the transportation lines within the meaning of the act, and hence so long as the Kentucky Central and the Cincinnati, New Orleans & Texas Pacific companies receive the freight at Newport and Ludlow, although the parties shipping it may be engaged in business at Cincinnati, the transportation of such property can in nowise be regarded as coming within the scope of the Interstate Commerce Act.

I have already shown how the Louisville & Nashville road, the longer line between Lexington and Cincinnati, would be debarred from the privilege of participating in this traffic, a result certainly never contemplated by the friends of the act.

#### BIRMINGHAM, ALA.

This city is perhaps the best known and regarded as the most progressive city of the South. It has been very appropriately termed "The Magic City." Its growth has been simply wonderful. The first railroad built to Birming-

ham was the Alabama Great Southern, extending to Chattanooga in the northeast and to Meridian in the southwest, opened for business in 1871.

The second was the South & North Railroad of Alabama; opened for business October 1, 1872, extending to Decatur in the north and Montgomery in the south, being part of the Louisville & Nashville system, and reaching the Gulf ports of Mobile, Pensacola, and New Orleans and the Western commercial centers of Nashville, Louisville, Cincinnati, Evansville, St. Louis, etc.

The next was the Georgia Pacific Railroad, extending to Atlanta, Ga., in the east and Columbus, Miss., in the west; completed to Birmingham in 1882. The Kansas City, Memphis, & Springfield Railroad Company is building a line from Memphis, Tenn., to Birmingham, which will be completed within the next few months. The Birmingham & Sheffield Railroad Company is building a line from Sheffield to Birmingham, which will be completed within a very short time. The Central Railroad system of Georgia is building an extension to Birmingham to connect with its system at Goodwater. This city competes in trade of merchandise and Western produce with the cities of Montgomery, Selma, Chattanooga, Atlanta, and Anniston.

Birmingham is the center of the great pig iron producing district of the South. Pig iron, coal, bar iron, stoves, and machinery represent the principal articles shipped from that city. It is often necessary to make lower rates to distant points than to intermediate points. For example: Pig iron from Birmingham to New York is taken via Savannah for \$3.75 per ton. Of this rate the steamers take about \$1.50 and the rail lines to Savannah an average of about \$2.25 per ton. There being few points between Birmingham and Savannah using pig iron, the roads to Savannah can without injury apply this rate to all intermediate points, and being a water line between Savannah and New York, there is no intermediate territory to consider.

The Chairman: What are your rates to New York on pig iron, it being \$3.75 by way of Savannah?

Mr. Stahlman: By rail it should be about \$4, insurance making the difference.

Commissioner Walker: Do you understand that the Pennsylvania Company wants to participate in it?

Mr. Stahlman: I see no reason why it should not. The iron is going to the East; the Pennsylvania Company can not keep it from going there; and the question is whether the Pennsylvania Company will participate in carrying it or let it go by some other route and receive no benefit.

The Chairman: How much benefit would they receive from it, any road that would participate in taking it, at those prices?

Mr. Stahlman: Four dollars a ton would be eighty dollars per car. The distance is about twelve hundred miles. They have carried freight from Chicago to New York for a great deal less than that.

The Chairman: You assume that because a particular traffic will not bear any higher rates, therefore you must take it at those rates. That is the assumption of your argument here and elsewhere.

Mr. Stahlman: Then I have certainly not made myself clear.

The Chairman: It seems to me that is what you are assuming.

Mr. Stahlman: What I have endeavored to convey is that competitive forces fix the rates of transportation, whether they consist of competition between rail lines, between rail and water lines, or between markets.

The Chairman: Exactly; I understand.

Mr. Stahlman: These are the conditions which I have endeavored to impress upon the Commission. On this particular traffic we have two classes of competition. First, the competition by water and rail lines through Savannah, whose intermediate business will not be affected by the low rates to New York; the other, the competition between the Alabama manufacturer of iron and the English manufacturer—iron from England coming to New York at a nominal rate of transportation as ballast for steamers. Mr. Bowron's testimony shows that this rate has frequently been as low as twenty-five cents per ton.

The Chairman: But does not that sometimes raise the question whether the traffic should be taken at all? There is a question whether traffic should be taken at all when you must take it at such extremely low rates. Now, evidently the idea that existed in the mind of Congress to some extent, and in the minds of the people to a larger extent, has been that when you act upon that principle so far as to impose some share of the expense of the distant traffic upon the intermediate traffic, you burden the local traffic in order that you may carry a distant traffic from which you get no profit at all.

Mr. Stahlman: Apprehending this feeling from the tendency of the investigation in the South, I brought out all the facts relating to it in Mr. Culp's deposition. I want to show just what we are doing. The impression prevails that the Southern roads are carrying lumber, coal, cotton-factory products and pig iron for the manufactories of the South at any rates necessary to enable them to sell—in fact at rates which will enable them to cripple the manufacturing industries of other sections. This is a great mistake. I have in my hand Mr. Culp's deposition, which is very clear and full. It shows that the average rate on pig iron from the Birmingham district to all leading points in the West is \$5.12 per ton; that the average distance carried is 675 miles, and that the rate per ton per mile is 7 mills. From the Hocking Valley district to the same points the average rate is \$2.54 per ton; the average distance 360 miles, and the rate per ton per mile 7 mills. From the Mahoning and Shenango Valley districts to the same points the average rate is \$2.46 per ton; the average distance 389 miles, and the rate per ton per mile 6 mills. From the Hanging Rock district to the same points the average rate is \$2.39 per ton; the average distance is 383 miles, and the rate per ton per mile 7 mills. Surely the iron manufacturers of the Hocking Valley, the Mahoning and Shenango Valley, and the Hanging Rock districts have no right to complain of an average rate from Birmingham of \$5.12 per ton against \$2.54, \$2.46 and \$2.39 per ton respectively, while the rate per ton per mile from the South is as great—and in one case greater—than from the Pennsylvania and Ohio iron-making districts! You may, Mr. Chairman, compare these rates with the table furnished you from Birmingham, and you will see that the highest rates are to Minneapolis and St. Paul, and that they come down as they reach Louisville, the nearest point.

Commissioner Walker: Louisville may be very profitable and Minneapolis a great loss.



Mr. Stahlman: No, sir; the rate to Louisville is \$3.40 per ton; distance 394 miles—8 mills per ton per mile.

Commissioner Walker: How many tons on the car?

Mr. Stahlman: Fifteen, sometimes twenty. The rate to Minneapolis is \$7.90 per ton; distance, 1,071 miles—7 mills per ton per mile. Minneapolis is the most distant point. The rate to Cincinnati is \$3.65 per ton; distance, 479 miles, 7 mills. Columbus, Ohio, \$4.40 per ton; 599 miles, 7 mills. Pittsburgh, Penn., \$5.25 per ton; 792 miles, 6 mills. At Pittsburgh we come in direct competition with iron from the Pennsylvania district, but the Pennsylvania road has given us a rate to Pittsburgh.

The Chairman: Their competition is a competition of business and not of carriage.

Commissioner Walker: That was scaled down, as I understand it, under your contract with the pig iron people.

Mr. Stahlman: I want to show that. Our minimum rate, which was \$2.75, to Cincinnati is now \$3.65, a difference of 90 cents; but remember that while this scale has advanced the rate 90 cents per ton as between Cincinnati and Birmingham, where the rate goes down, it does not scale it down to Minneapolis relatively, because the lines from river points have fixed the rates on pig iron, and they fix them in line with the rates from other districts; and while we may reach the minimum by a reduction of 90 cents between Birmingham and Cincinnati, the reduction would not exceed 90 cents on the rates to Minneapolis, unless the rates from other districts were reduced proportionately. This is a very interesting table, Mr. Chairman, covering all of the principal points, which I should be glad to have the Commission scrutinize very carefully. It shows, for example, that while the rate from Birmingham to Louisville, a distance of 394 miles, is \$3.40 per ton, the rate from the Mahoning district to Louisville, a distance of 410 miles, is only \$2.70.

The Chairman: Have not these rates come into conformity with the law?

Mr. Stahlman: This is the basis on which the rates have been adjusted for years. There has been an advance north of the Ohio River since the law went into effect, and this advance and uncertainty has given our Southern iron manufacturers a great deal of trouble.

The Chairman: I have no information that they are not complying with the law in the West.

Mr. Stahlman: I do not understand, Mr. Chairman, that an advance in rates would be a violation of the law, but that the advance was the result incident to the enforcement of the law. The point I am endeavoring to make is, that the Southern railroads are not and have not been carrying pig iron from the South to the Western consuming markets at a less rate of per ton per mile than pig iron is being carried to the same markets from the Hocking Valley, the Mahoning Valley, the Shenango Valley, and the Hanging Rock districts, and Mr. Culp's testimony clearly demonstrates this fact.

Commissioner Walker: That does not prove that there is any money in the rate for your road.

Mr. Stahlman: I do not suppose any one will controvert the proposition that seven mills per ton per mile is money to the railroad.

Commissioner Morrison: They get less than that from the Mahoning Valley down. That is on the same principle that it costs them more to make the iron.

Mr. Stahlman: I want to remove from the mind of the Commission the idea that the Southern roads have deliberately gone to work to flood the whole Western country with Southern pig iron to the detriment of the manufacturers of iron in other sections.

Commissioner Bragg: Is that Mr. Culp's deposition you have been reading from?

Mr. Stahlman: Yes, sir. I take the position, Mr. Chairman, that our Southern furnaces, being considerably further distant from the consuming markets than the furnaces in the East, ought not to be taxed in excess of what other people pay, or what would seem reasonable. If they are paying from \$2 to \$5 per ton more than the other furnaces are paying, it is protection enough. I do not believe this law was designed to protect the Lake Superior man's ore-bed, where he is asking \$4 to \$6 per ton for ore, in order to cripple the Alabama man, who is willing to sell his ore at 75 cents to a \$1 per ton.

The Chairman: The real question is between the competitive points, as you call them, and the small points on your road, and not any question between you and these other people. If you are giving to these intermediate stations what are fair rates, and not charging them with any burdens on traffic to competing and distant points, then there is no equitable claim against you.

Mr. Stahlman: I think that is true. I do not think it will be claimed that we have not given to all our points a line of reasonable rates. Our local business is not all strictly local business. Take a certain class of traffic at a local point on the line of one railroad, and the business is more or less affected by competition between markets; we are obliged to recognize this fact, and adjust our rates accordingly. We have not fixed any rates from Birmingham on either pig iron, bar iron, or iron products in any form, which are onerous, exorbitant, or oppressive to the people. I say frankly that we have so adjusted rates on the line of our road that the people do not feel oppressed. I believe the people generally are satisfied, and satisfied with our basis of making rates.

The Chairman: What is the highest-aggregate charge on pig iron to intermediate points between Birmingham and Cincinnati?

Mr. Stahlman: There is no pig iron consumed at intermediate points except Louisville and Nashville, that I am aware of now. The rates to those points are lower than to Cincinnati; but considerable bar iron, stoves, etc., are manufactured at Birmingham, on which the rates to intermediate points are higher than to Cincinnati.

The Chairman: Then, so far as pig iron is concerned, you have no occasion for relief.

Mr. Stahlman: So far as pig iron is concerned we are precisely in the same condition as the gentleman who appeared before you a few days ago representing the Lake Shore road. We have a long line and want permission.

The Chairman: Is it only with reference to New York, Boston, and Philadelphia business that you ask relief?

Mr. Stahlman: So far as I now know, it is.

The Chairman: Then that is the only traffic that needs discussion here; all else is immaterial.

Mr. Stahlman: I was discussing it only in connection with the general business of Birmingham.

Commissioner Walker: That is a matter for the trunk lines.

Mr. Stahlman: I do not so understand it. We have applied for general relief on behalf of the city of Birmingham, concerning not only the pig iron, but bar iron, stoves, Western produce, merchandise, and general business of the city. So far as relief on pig iron to the East is concerned, it will not apply to any line which does not participate in the relief. The idea seems to prevail that the people of Birmingham have no cause for complaint; they are not in any trouble; they are not being hurt. The facts are, they are being hurt, and being hurt by the enforcement of the law north of the Ohio River. It is not mere imagination, the testimony shows that the lumbermen, the cotton-factory men, in fact, all classes who have business intercourse with the East and West, are being seriously affected by the enforcement of the law.

The Chairman: That is a matter for Congress, not for us.

Mr. Stahlman: I want to show you how our people reason: "If the roads north of the river, in complying with the law, have advanced their rates, it stands to reason that the lines south of the river, when they enforce the law, will be obliged to advance their rates also, and this we can not stand." Upon that point it seems to me, Mr. Chairman, there can be no doubt. You may say to us, you should reduce your rates, or you should so adjust your rates that they shall not be higher to and from intermediate points than they are to and from competing points. I say to you, in all frankness and candor, that we can not do. You may say, "You ought to do it." I say that we can not unless we are willing to throw ourselves right into the jaws of bankruptcy. That is a plain proposition. If we were to fix our rates to intermediate points between Montgomery and Louisville on the basis of our rates to Montgomery, it means ruin. If we were to fix our rates to intermediate points between Mississippi River points and Louisville and Cincinnati on the basis of those rates, that means ruin. If we were to withdraw from traffic at competitive points, it means ruin, unless we advance our local rates; and if we were to advance our local rates it means ruin to the business interests of the country. Mr. Culp's evidence is very full and explicit on these points. It bristles with facts which can not be controverted, and I beg you, Mr. Chairman and gentlemen, to carefully consider all that this testimony implies.

It may be that this Commission has no power to grant relief in cases where the circumstances and conditions are di-similar. If the Commission shall construe the law to give such power, I am clearly of the opinion that it should be exercised to arrest the threatened disaster.

The Chairman: As to this iron, I do not understand that you need any relief in respect to towns on your own line. You are not making any higher rates than to any terminus or any other competitive point?

Mr. Stahlman: I think not.

The Chairman: How is it as to New York rates?

Mr. Stahlman: This is a large and growing business. It has grown up within the last two years between the Birmingham district and the Chattanooga district and Philadelphia and New York. Take the line from Birmingham

through Savannah, and there is nothing in the act to obstruct the movement. There is no pig iron of any consequence consumed between Birmingham and Savannah at intermediate points. Of course none is consumed between Savannah and New York. So that this line can fix any rate it pleases without affecting its intermediate business. This route has fixed the rate from Birmingham to New York at \$3.75 per ton, which is a fair revenue. We could carry that business, and we ought to carry our share of it, at least, by fixing a rate of about \$4.00 per ton.

The Chairman: How much would that be per mile?

Mr. Stahlman: Something over three mills; very small, to be sure. But remember, as shown in the testimony, and I have it here in figures, that our cars are going north-bound empty, and while we have been able to increase our tonnage north-bound considerably, by reason of the development of this iron industry, a large number of our cars are still going back empty. The movement for the last nine months shows the excess of empty cars moved north to be:

Over the Nashville & Decatur Division.....	11,400 cars.
Over the Henderson Division.....	14,700 cars.
Over the Main Stem.....	6,935 cars.
Over the Mobile & Montgomery Division.....	9,040 cars.
Over the South & North (Birmingham).....	15,017 cars.

The Chairman: What route does that traffic take now, through Cincinnati?

Mr. Stahlman: Yes; through Cincinnati, or through Louisville without going through Cincinnati, or it might go through Evansville.

The Chairman: Then on this New York traffic you would not need any relief. You charge but \$3.65 to Cincinnati.

Mr. Stahlman: How about Pittsburgh?

The Chairman: That is another thing. How much do you charge to Pittsburgh?

Mr. Stahlman: \$5.25 per ton.

Commissioner Morrison: You do not expect to sell any there?

Mr. Stahlman: I suppose our Pennsylvania friends do not care to have us, but there is considerable southern iron sold at Pittsburgh.

The Chairman: If you can build up a market there at \$4.00, why do you not carry it there for \$4.00?

Mr. Stahlman: We can not get there very well without the consent of the Pennsylvania Railroad.

The Chairman: You can not get any where else without the consent of some road.

Mr. Stahlman: Quite true; but lines leading to other points have no particular interest in excluding us. Take the Pittsburgh business. Of course, if the Pennsylvania Railroad can fairly protect its own industries, I assume that it will do so, although it has joined us in the rate of \$5.25, making a rate from Cincinnati to Pittsburgh \$2.00 per ton, and that is no violation of the law. The point I make is this: They do not want that rate any less; that would look like discriminating against their own industries. But as to the New York business the situation is different. The business is going there by another route, and to carry it via Cincinnati is so much gained by the all-rail lines.

The Chairman: This is the point I want explained. You are asking relief as to a particular traffic on your road, and when we come to look at your line you do not need it on your road at all. Now, if it is needed in respect to some distant traffic which you can not take at all except in connection with other roads, is it not an answer that these other roads should unite with you in asking relief? They can not participate with you until they are given permission. You ask for an order from this Commission which, when obtained, will be entirely futile upon its face, depending upon contingencies and the will of other people.

Mr. Stahlman: Suppose the order were granted, would it be considered a violation of the law on the part of the Erie to participate in this traffic to New York?

The Chairman: It would depend on what the order was. The proper thing would be for them to come and unite with you, as has been done in other cases.

Mr. Stahlman: I do not understand that this would be necessary. I mention the New York, Lake Erie & Western Railroad, because I believe it is so situated that it could participate in carrying this Birmingham iron without involving any of its intermediate business, and that in doing so it would not violate the fourth section of the act.

The Chairman: It would not?

Mr. Stahlman: No, sir; I am quite sure the New York, Lake Erie & Western Railroad has no intermediate business which would be affected by joining in the transportation of the Birmingham pig iron to New York.

Commissioner Walker: Then you don't want any order?

Mr. Stahlman: I do not see how we can get along without relief under a rigid construction of the act. While it may be true that the New York, Lake Erie & Western road would not violate the fourth section by participating in this New York traffic, because it has no intermediate business, it might hesitate to do so unless relief is granted to the Louisville & Nashville road, and would not relief to the Louisville & Nashville road be necessary, inasmuch as it has business to intermediate points upon which higher rates are charged?

The Chairman: May you not have some erroneous opinions on that subject? But that is neither here nor there. I do not see as you state the fact that you have any particular occasion to come to us unless the others unite with you.

Commissioner Morrison: We get communications by every mail, saying, "that if the Commission will say that this will not violate the law, we will have it to make terms with these people. They will treat with us."

Mr. Stahlman: No doubt of it.

The Chairman: We have supposed that you needed relief in respect to business to stations on the line of your road.

Mr. Stahlman: No, sir; not on the line of our road as to pig iron.

The Chairman: If you want to make a through rate to some distant point, and it is in respect to that distant traffic that you want relief, then the line in connection with which you expect to carry the traffic should appear with you.

Mr. Stahlman: We have not asked for relief on traffic to and from Birmingham. Concerning pig iron alone, as has already been stated, the lines north of the river have fixed arbitrary rates on pig iron and the lines south of the river,

including the Louisville & Nashville Railroad, have established a basis of rates to Ohio River points. It may become necessary for the lines south of the Ohio River to fix a less rate, in the aggregate, to more distant points than is fixed to nearer points. This can be done by the lines south of the Ohio River reducing their rates up to the river without asking any concessions from the lines north of the river. Now I submit if it would be necessary for a connecting road north of the Ohio, which has made no concession in its rates, to unite with the Louisville & Nashville road in an application which would allow this company to make a concession in its rates between Birmingham and the Ohio River? I should say that a joint application in such a case would be unnecessary; and I should say, in the case of the New York pig iron traffic, if the New York, Lake Erie & Western road should see fit to participate in this transportation, that no application from that road would be necessary, because it has no intermediate business which would be affected, and the only application necessary would be upon the part of the Louisville & Nashville road, which transports large volumes of intermediate business upon which the rates are higher. Speaking of this \$4 rate between Birmingham and New York, when we come to consider it, it's not so excessively low. It would pay the lines east of Cincinnati about thirteen cents per 100 pounds, while we all know they have in years past carried large volumes of grain and provisions from Cincinnati to New York at rates as low as eight and ten cents per 100 pounds. But the pig iron business is not the entire business of Birmingham. There are other branches of business which need this relief.

Commissioner Bragg: Are there iron works at Montgomery?

Mr. Stahlman: They are building now.

Commissioner Bragg: Are there iron works at Nashville?

Mr. Stahlman: Yes, sir.

Commissioner Bragg: At Louisville?

Mr. Stahlman: Yes, sir.

Commissioner Bragg: At any other points on your line than those three?

Mr. Stahlman: No, sir.

Commissioner Bragg: Take the rates from Birmingham to Montgomery, for instance, would you charge the same rates on iron from Birmingham to Verbena, Ala., that you do to Montgomery?

Mr. Stahlman: Oh, no.

Commissioner Bragg: Verbena is an intermediate point?

Mr. Stahlman: Yes, sir.

Commissioner Bragg: Do you charge the same rate from Birmingham to Calera that you would to Montgomery?

Mr. Stahlman: No, sir.

Commissioner Bragg: You charge less on iron to Montgomery than at intermediate points?

Mr. Stahlman: Yes, sir.

Commissioner Bragg: From Montgomery to Nashville, is your Nashville rate on iron from Montgomery higher or lower than it would be to Columbia, Tenn., and intermediate points?

Mr. Stahlman: Lower.

Commissioner Bragg: Is it lower from Birmingham to Nashville than to any of those intermediate points?

Mr. Stahlman: Yes, sir.

Commissioner Bragg: From Birmingham to Louisville do you charge lower rates than to intermediate points between Nashville and Louisville?

Mr. Stahlman: Yes, sir.

Commissioner Bragg: Then, so far as iron is concerned, there are points on your road where you would want relief?

Mr. Stahlman: Oh, yes.

Commissioner Bragg: But I understood you to say a while ago you would not want relief?

Mr. Stahlman: I was speaking of pig iron. There is no consumption in pig iron to amount to a great deal at these local intermediate points now, that I am aware of.

Commissioner Bragg: That does not make any difference; they are intermediate points.

Mr. Stahlman: Unquestionably.

Commissioner Bragg: On general freight, do you charge less or more to Birmingham than to intermediate points?

Mr. Stahlman: Less.

Commissioner Bragg: You want relief then as to them?

Mr. Stahlman: Certainly. I want to say, Mr. Chairman, that while the manufacture of pig iron is the basis of all business of Birmingham, it does not by any means cover the total business of that city. We did not suppose that it was the design of the Commission to apply relief to any particular branch of business. The application for relief was not made in that form, but to cover the general business of that city. We desire very much to have relief on pig iron to the end of our line, and we will do the best we can with it beyond that. If the New York and Philadelphia traffic continues to grow as it has done for some time, it will be a very serious question with us, but independent of pig iron we need relief on the general business of Birmingham. The manufacture of bar iron, spikes, rails, stoves, and other articles the product of iron, has grown to quite large proportions.

In supplying the Southern coast with such articles a lower rate is necessary to the coast than to intermediate points; and in supplying the West with such articles a lower rate is necessary to Cincinnati, Louisville, and other points, to meet competition of iron coming from the Pittsburgh districts down the Ohio River, than is made to intermediate points between Cincinnati and Birmingham; besides there is a large traffic in merchandise from the East, and grain, provisions, etc., from the West.

Birmingham, it is true, is not directly affected by water competition, but indirectly it is. The towns of Florence and Sheffield are located on the Tennessee River, a stream which is navigable the year round. Sheffield is about one hundred miles from Birmingham, and a railroad will be completed there within a few months. The Memphis & Charleston and the Louisville & Nashville via Decatur have a line in there now. The town of Florence was somewhat of a distributing center several years ago, before the Memphis & Charles-

ton road felt the necessity of having the Western business come over its long line from Memphis, since which time they have not encouraged business via Florence. The rail lines from the West being compelled to charge as much to Birmingham as to intermediate points, would make that progressive center a local station. The Birmingham & Sheffield Railroad will not want any thing better than the opportunity of going in and saying to Florence, "Now build up your commercial center for the supply of Alabama; ours is an Alabama road. You can bring your supplies from the Ohio and the Mississippi rivers. You have regular lines of steamers the year round. Bring it in any quantity from Cincinnati, Louisville, St. Louis, Evansville, and Cairo to Florence, and we will give you distributing facilities at Birmingham and other Alabama points." This is an element which in our judgment makes it necessary to give us the right to charge to and from Birmingham less rates than we charge to and from intermediate points. It is an element over which we have no control, and over which this Interstate Commerce Act has no control. The supplies are shipped from the West to Florence, and Florence is made the center from which they are reshipped. The only question is, whether they shall go through Florence by steamboat line or direct by rail as heretofore.

I have now, Mr. Chairman, covered all the points involved in the application for relief made on behalf of the Louisville & Nashville Railroad Company. They are not so numerous as would appear from the form of application. There are only twenty, and all of these, except Lexington, Ky., and Birmingham, Ala., are located on navigable streams, favored with direct water transportation, which the proof in the investigation clearly shows to be the leading factor in fixing the rail rates to and from those points.

I desire to impress upon this honorable Commission another fact clearly established by the proof, and that is that the Louisville & Nashville Railroad Company has not been engaged in the practice of building up one city or locality to the detriment of another. The proof, I aver, is overwhelming that the rates of transportation to and from these several commercial centers have not been arbitrarily fixed by the Louisville & Nashville Company in the interest of any particular city, but have been forced upon the company by circumstances and conditions over which it has had no control. The Congress of the United States has from time to time appropriated the following sums for the improvement of the following rivers:

The Kentucky .....	\$762,500 00
The Ohio .....	3,341,562 91
The Mississippi below Cairo.....	20,194,188 53
The Cumberland and tributaries.....	857,000 00
The Tennessee and tributaries.....	3,377,456 94
The Alabama and tributaries .....	695,500 00
<b>Total .....</b>	<b>\$29,228,208 38</b>

These appropriations have served to largely augment the competitive forces which the Louisville & Nashville Railroad Company has been unable to ignore.



## APPLICATION ON BEHALF OF THE SOUTHERN RAILWAY AND STEAMSHIP ASSOCIATION.

The application presented on behalf of the Southern Railway and Steamship Association prays for relief from the operation of the fourth section of the act on traffic to, from, and through various points within the territory of the Association, fifty-one in number. Assuming that the lines directly interested in the relief will undertake to show why relief at many of the points should be granted, I will confine my presentation of the question to points with which I am familiar, twenty-one in number. The cities of Wilmington, N. C., Charleston, S. C., Port Royal, S. C., Savannah, Ga., Brunswick, Ga., are all coast points, and, as shown by the evidence, have the benefit of and afford active competition on all traffic passing to and from the East and to and from the West.

The city of Jacksonville, Fla., is located on the St. John's River, enjoying practically all the advantages of a port.

### COLUMBIA, S. C.

The city of Columbia is located on the Congaree River, which was navigable for a long distance above and below that point.

Commissioner Walker: Is it not navigable now?

Mr. Stahlman: It undoubtedly is.

This city became a distributing center prior to the construction of any railroads, being practically in control of the commerce and trade of a large portion of the interior of South Carolina.

As early as 1840 the Columbia branch of the South Carolina Railroad was completed from Charleston to Columbia.

In 1869 the Charlotte, Columbia & Augusta Railroad was completed between Augusta, Columbia, and Charlotte.

In 1881 the Wilmington, Columbia, & Augusta Railroad was completed, extending from Wilmington, N. C., to Columbia.

The construction of these railroads tended very materially to aid in the development of the country tributary to Columbia, and to that extent enlarged the business which the city enjoyed prior to the construction of railroads, and induced large investments of capital in mercantile and manufacturing pursuits.

It is safe to assume that the building of these roads added to the importance of Columbia only to the extent that they aided in the development of tributary territory, and that the business of Columbia would have been relatively as large as it is now if there had been no railroads constructed in that section of the country.

### AUGUSTA, GA.

The city of Augusta is located on the Savannah River, a navigable stream, which, to make and keep in a navigable condition, Congress has appropriated \$674,6,096.6

Augusta became a trade center before the State of Georgia had any rail-

roads, handling the cotton of a large section and supplying merchandise to that section.

The first railroad built into Augusta was the South Carolina Railroad, extending from Charleston, S. C., to Augusta, completed in 1833.

The second, the Georgia Railroad, extending from Atlanta to Augusta, completed in 1845.

The third, the Central Railroad of Georgia, extending from Savannah to Augusta, completed in 1854.

The fourth, the Charlotte, Columbia & Augusta, extending from Charlotte, N. C., to Augusta, completed in 1869.

The fifth, the Macon branch of the Georgia Railroad, extending from Macon to Augusta, completed in 1872.

The sixth, the Port Royal & Augusta, extending from Port Royal, S. C., to Augusta, completed in 1873.

The seventh and last, the Augusta & Knoxville Railroad, extending from Spartanburg, S. C., to Augusta, completed in 1882.

Of course the construction of these various railroads added very much to the importance of the city of Augusta as a distributing center, and aided very much in the development of its tributary territory. But having the Savannah River, which afforded good transportation facilities, it is reasonable to assume that the city of Augusta to-day enjoys no greater advantages relatively than she would have enjoyed had no railroads been constructed within the limits of the State of Georgia.

#### ATHENS, GA.

This is an important town, located on the lines of the Richmond & Danville and the Georgia railroads.

In 1845 the Georgia Railroad and Banking Company completed its main line between Augusta and Atlanta, Ga., and its branch line from Union Point to Athens.

In September, 1876, the Northeastern Railroad of Georgia was completed from Tullulah to Athens, Ga., thus giving Athens competing lines via the Richmond & Danville through Richmond to Norfolk, and via the Georgia Railroad through Charleston and Savannah, on business to and from the East; also, competing lines, via the Richmond & Danville and the Georgia Railroad through Atlanta, on business to and from the West. A large sum of money was subscribed by the citizens of Athens to aid in the construction of these railroads, particularly the Northeastern Railroad, for the purpose of obtaining additional railroad facilities and competition. In September, 1881, the Richmond & Danville Company purchased the stock of the Northeastern Railroad owned by the city of Athens, agreeing at the time that the rates to and from Athens should be the same as the rates to and from Augusta, Ga. The distance from points in the West to Athens are practically the same as the distance from the West to Augusta, Ga., and there is little if any difference in the distance from the East to Augusta and Athens, Ga. Athens competes with Augusta for trade in the same territory, and it would only seem fair, in view of the money contributed by the people of Athens to secure a competing

line, and the contract with the Richmond & Danville Railroad, that the people of Athens should have the benefit of such rates as may, from time to time, be enjoyed by the city of Augusta.

The Chairman: I will ask a question which you may have in mind as you proceed. In case there should be an order by the Commission establishing such a state of things as you think they can establish and ought to establish, and in view of all the facts which you have presented, what would be the difference in the condition of things through the country reached by your road, after the law settles down into its full operation under our orders, compared with what it was before?

Mr. Stahlman: I do not know that there will be any material difference.

The Chairman: Then, is not what you ask—you can direct your attention to it to any extent you please as you proceed—in effect to nullify the law in all that region?

Mr. Stahlman: Practically, yes, so far as the fourth section is concerned; and I think before I get through I will show why the South, and the business of the railroads in the South, should be made an exception.

The Chairman: The whole country down there—through its members of Congress at least—asked for this law, and it is to be supposed that they were aiming at something which they thought was wrong. You say it is all right. After all, are we not obliged to assume that it was wrong, that is, if Congress considered it wrong, no difference whether we think so or not. And in the same connection, as you proceed, there is another question to be borne in mind: Point out how and where you think power has been given us to do what you say is practically to nullify that provision in the law in that whole section of country, embracing six or eight States.

Mr. Stahlman: I want to answer that. To the first proposition I said, "Practically, yes." The suspension would leave every thing in the condition that it was before.

Commissioner Morrison: As to long and short hauls?

Mr. Stahlman: Yes, sir, as to long and short hauls, with this reservation, there are a number of minor points embraced in the territory covered by the Southern Railway and Steamship Association which have had the benefit of competitive rates for which there may be no absolute necessity. All told there are seventy-one points in the ten States on behalf of which the railroads have applied for relief. From the form of the application it would look as though there were five hundred. I have examined the application pretty carefully, and while I do not want to say that this or that point ought to be excluded, it is my judgment that about forty points will cover the list, which ought to have relief. I am undertaking to show why a number of these ought to be relieved. I will leave other points to the lines immediately interested. With these exceptions the condition would be practically the same as before.

On the point as to what the people wanted I may say the masses took very little interest in the question. In my own State the question is thoroughly understood.

The Chairman: We have to assume that it was thoroughly understood by Congress.

Mr. Stahlman: I am aware of that, Mr. Chairman; but in assuming that it was understood by Congress, ought we not to consider the situation as we find it in the various Southern States? Is not the legislation in the various States a better indication as to what the people want? We find no commission law in Louisiana, none in Florida, none in North Carolina, practically none in Virginia, and none in Tennessee. We do find a law in Alabama, Mississippi, South Carolina, Kentucky and Georgia. But in none of these States has an attempt been made to enforce the long and short haul provision. Nor has any legislation been enacted which would warrant the enforcement of that law, except in Georgia, where the Commission has absolute power to do what it will in respect to rates of transportation—but it has not undertaken to enforce a rule or an order which would prevent the railroads from charging more for a shorter than for a longer haul.

Commissioner Walker: The Georgia Commissioners say they have; they claim that is the meaning of their rules and regulations, and they have practically put it in force.

The Chairman: And because the other States did not comply they went to Congress.

Commissioner Walker: It is the good example of Georgia which has set it going every where.

Mr. Stahlman: Does that information come from the Georgia Commissioners?

The Chairman: Oh, directly—officially.

Commissioner Walker: They claim that they have enforced as far as they can the principle of the long and short haul on their local business.

Commissioner Bragg: I would ask, as a matter of information, where they said that, for I know very well they have not done it.

Commissioner Walker: I do not know whether you were present when Mr. Campbell Wallace was talking about it. He says he made an exception where they were within twenty miles of a town on account of competition with the wagons.

Mr. Stahlman: I want to read Commissioner Wallace on himself. He was asked by the Kentucky Commission to give his views on the general question of Railway Regulation, including the "long and short haul." Here is what he said:

"Under the law, the Commission recognize their duty to make a tariff of rates that would be 'just and reasonable for both the people and the railroads.' We recognize the right of every man in the State of Georgia, no matter where located, to have his freights carried at 'just and reasonable' rates, to be fixed in accordance with his facilities for transportation, natural or artificial, or both.

"I mean this: A community having more railroads than one, or having one only, and a navigable water-course, has commercial and transportation advantages and facilities that, according to all the laws of trade and commerce, do not accrue to a community or an individual with only one railroad, or simply a navigable water-course. Now, with this idea governing the Georgia Commission, we recognize the right of every man in the State of Georgia to select his own market in which to buy his supplies or sell his products without obstruction on the part of transportation companies, either in the form of unreasonable and unjust rates or arbitrary rules. No agreement or contract, expressed or implied, among or between such companies, should be permitted to delay or in-

terfere with the shipment of freights to any market, or over any route the shipper may designate. Division of the earnings or the quantities of tonnage by a stipulated percentage among themselves to the injury of shippers subjects the common carrier to damages.

"The shipper, on his part, must be content with the advantages or disadvantages of his commercial location. If a man voluntarily builds his house on the top of a hill, he must make up his mind when he goes from home to have the inconvenience and labor of climbing that hill when he returns. If a man raises his bale of cotton ten or twenty miles from a railroad station, or cultivates his land on the banks of a navigable river, or on the line of a railroad without competition, he can neither expect or rightfully demand as low a rate of freight as the man with all the advantages of competition accruing to him by a multiplicity of the means of transportation. If the former gets the 'just and reasonable' rates contemplated by the law of Georgia, he has his full rights, not only under the law of his State, but his equitable rights under the law governing commerce adapted to his location and transportation facilities."

Maj. Wallace handed me this paper while we were in Atlanta, saying: "These were the views we entertained then; we entertain them now. We are governed by that principle in adjusting the rates to and from points in Georgia." Maj. Wallace has never been charged with any partiality toward the railroads of Georgia. On the contrary, he has been considered a hard taskmaster, an extremist on the question of railway regulation, and has enforced many orders and decrees which have proven a great hardship to the railroads.

I do not know what correspondence has passed between this honorable Commission and the Commission of Georgia. But the paper from which I have read represents the situation as it is to-day, according to my information, which was confirmed by the statement made by Maj. Wallace to me at Atlanta. It is true that during the Atlanta sitting a Mr. Jonathan Norcross and his brother-in-law Hill, claiming to represent the farming interests, came before the Commission to ask the enforcement of the fourth section. But I affirm that they did not represent the true sentiment of the farmers of Georgia. They came under false colors; neither of them had any interest in common with the farmer. Mr. Hill claimed to be a farmer, but it is well known that he never farmed a day in his life. It occurs to me that if the people of Georgia wanted the long and short haul provision enforced, they would have asked the Commission of Georgia to enforce it. That Commission has ample power, which has never been called in question.

In the State of Mississippi, I have been informed, strenuous efforts were made during the last session of the legislature to embody the long and short haul provision in the law, but they failed. In the States of South Carolina, Virginia, and Kentucky, no attempt has ever been made to enforce such a provision. In the State of Alabama the Commission has never seen fit to suggest the enforcement of the long and short haul provision. And the people throughout the South are generally satisfied. The only dissatisfaction we heard during the entire session of the Commission as to the State of Alabama was from Opelika, which had better rates than its neighbors, and wanted still better.

Mr. Dunklin came from Greenville, Ala., a point on the line of our road, and said: "You have treated us well; we have no fault to find with the Louisville & Nashville Railroad, but we would like to have this law enforced, just to

see how it will work." He was the only man on the line of the Louisville & Nashville road and the people of Opelika were the only people in Alabama who came forward to ask the enforcement of this law. .

Commissioner Bragg: There was a request from Evergreen.

Mr. Stahlman: I think perhaps there was a small petition from Evergreen. But there was also quite a large one asking for the suspension. And there was also a petition from Greenville, Mr. Dunklin's town, asking for a suspension. The people of the South are not hankering after the enforcement of this law. I mean the masses—the farmers, if you please. They are not troubled about it. They are very well satisfied with the treatment they are receiving, while the business men generally ask for the suspension. The people in the interior towns feel like Mr. Wallace about it: "If a man voluntarily builds his house on the top of a hill, he must make up his mind when he goes from home to have the inconvenience and labor of climbing that hill when he returns."

Commissioner Walker: What Maj. Wallace said was about this (reading): Rule 6 accomplishes the object of the law as near as it can practically be done, while rule 7 allows a free reduction of freight rates under twenty miles, there being competition on the short haul by wagon. And the same rule allowed restricted reduction on long hauls of two hundred and fifty miles, which takes them outside the limits of the State.

Mr. Stahlman: Do you consider that this rule would apply to the long and short haul in Georgia?

Commissioner Walker: Not absolutely.

Mr. Stahlman: This rule allowing a reduction on twenty miles to meet the competition of wagon explains the rates to Bolton as compared with Marietta, of which we heard a good deal in Atlanta. Bolton is only a short distance from Atlanta, and comes in under the twenty-mile provision.

The fact that the Georgia Commission recognizes wagon competition makes our case only that much stronger. If competition by wagon is a legitimate object of recognition on purely State traffic, how can we afford to ignore water and other like competitive forces on interstate traffic?

As to Tennessee, the only State in the Union where the question has been brought squarely before the people, I want to say that we had a commission law in 1882 giving the Commission power to fix rates. The Commissioners were elected by the people. The question was taken before the people in the next campaign, one party declaring against regulation and the other party for it, the party declaring for it being the majority party in the State by about forty thousand. The campaign was fought out on that issue, and the minority party carried the State by about eleven thousand votes.

Commissioner Morrison: Your people bolted the ticket?

Mr. Stahlman: I think almost any body would bolt when he is starving, or somebody is doing something which is calculated to produce starvation. But the bolt was not confined to the railroads, it was general all along the line. The business men from one end of the State to the other bolted to repudiate the doctrine that a man should not be allowed to manage his own affairs as long as he was doing right and kept within the bounds of the common law. The bolt and vote meant that the railroads were doing right, and the people were

satisfied. And in deference to public sentiment, thus expressed at the ballot-box, the Democratic party two years thereafter, in the largest representative convention ever assembled at the Capitol of the State, by a vote of over two to one voted down the proposition to again embody such a plank in its platform; and the Republican party, in convention the same year, by a unanimous vote gave an emphatic declaration against it.

The Chairman: It is the fighting of the railroad companies half the time that brings you to the point of starvation. If you had not fought between yourselves and with the steamboat men so much you would have been better off.

Mr. Stahlman: I am glad you have brought this out, for I should probably have forgotten to consider the point. I wish the law had been framed so as to prevent wars between transportation companies. But I do not construe the law in that way. So far as the contests with the steamboats are concerned, it has simply tied the hands of the railroads in order that the steamboats may cudgel them to their heart's content. Mr. Culp's deposition shows to what extent we have been fighting the steamboats. It is very clear on this point. It gives the rates in detail in effect between river points during the past seven years; and a careful scrutiny of this table, compared with the rates to the interior where there is no river competition, will show that the rates by rail into the interior have been relatively reduced as much as or more than the rates between river points during that period. This, Mr. Chairman, proves conclusively that the railroads have not forced the issue, and if there is any issue it is due to the steamboat people themselves, who have brought it on. The railroads have had fights among themselves, and very vigorous fights at that, but the section which I represent has been comparatively free from such troubles. We have had our disagreements and disturbances, and here and there some friction, but as a rule all of our troubles have been adjusted without wars. We had a little brush in Birmingham with the Queen and Crescent route, several years ago, to determine what the rates from Cincinnati and Louisville should be to Birmingham, which was settled by arbitration.

The Chairman: Have the rates as fixed by that arbitration been left so ever since?

Mr. Stahlman: Yes, sir; they have not been disturbed. The disturbing element with us in the South all the way through has been that of a relative adjustment of rates. We have had our disagreements, but, as a rule, have been too conservative to fight about it. The Southern Railway and Steamship Association was one of the earliest organizations of that kind created in this country. Through it and through similar appliances we have been able to adjust our troubles, so that we have been comparatively free from wars. The Louisville & Nashville Company, although it traverses a vast territory and is considered a strong line, is not in a position to arbitrarily demand any thing or to fix an arbitrary adjustment of rates to and from any point. Although we have a direct line from the West to Montgomery, we are not in a position to say that the rates to and from Montgomery shall be absolutely fixed at a given figure. To take that position would warrant another line in saying that the rates to Atlanta shall be made a certain figure; and still another to say that the rates to Augusta should be a certain figure; and still another, that the rates to Macon

should be a certain figure; and still another, that the rates to Selma should be a certain figure, and so on through the list; therefore the lines directly interested in the traffic to and from these various centers come together and agree among themselves what the rates shall be, and if they can not agree the question is submitted to arbitration. This method, which is undoubtedly the best, has enabled the lines of the South to avoid the rate wars so frequent between the trunk lines of the East and the railroads of the West. I do not mean to say that the Southern railroad men are more capable than the railroad managers of the East and West, but I do believe they are more conservative; and I believe, furthermore, they realize that the Southern roads have no margins to spare; that their earnings are barely sufficient to meet the demands upon them, and that they could not afford to participate in wars which would result in disaster. And it is because the Southern roads have no margin and can not afford to lose any part of their revenue, that they have appeared before this honorable Commission for relief. It is because they can not afford to reduce their local rates to the basis of their competitive rates; and because they can not afford to withdraw from the competitive business without advancing rates to and from their local points; and because the business interests of the people can not stand an advance of rates to and from local points, that they are before you to-day pleading for relief.

#### MACON, GA.

Let us, now, Mr. Chairman, consider the claims of the city of Macon, Ga. This city is located at the head of navigation of the Ocmulgee River. It is shown that Macon was a distributing center many years before railroads were built, and that she handled as much as eighty to one hundred thousand bales of cotton per annum, which in those days was a large quantity. In 1843 the Central Railroad of Georgia was completed from Savannah to Macon.

In 1846 the Central Railroad of Georgia completed its line from Macon to Atlanta, Ga., one hundred and three miles.

In 1851 the Southwestern Railroad, now part of the Central Railroad system, completed its line from Macon to Columbus, Ga.

In 1872 the Georgia Railroad & Banking Company constructed a branch of seventy-four miles from Camak, connecting the cities of Augusta and Macon.

Some years later the Macon & Brunswick Railroad was constructed from Macon, Ga., to the Port of Brunswick, distance one hundred and nine miles.

In 1882-3 the East Tennessee, Virginia & Georgia constructed a road from Rome, Ga., to Macon, Ga., distance one hundred and fifty-eight miles, connecting Macon with the East Tennessee system at Rome, Ga.

The city of Macon, therefore, has competition between three independent railroad systems to and from all points north, east, and west; through the ports of Charleston, Savannah, Port Royal, Brunswick, and Norfolk, and through Atlanta, Chattanooga, and Montgomery.

It is clear that the city of Macon was a distributing center many years prior to the construction of any railroad and did a large business; and if no railroads had been constructed it is likewise clear she would be one of the largest distributing centers in the State of Georgia to-day.



I submit, if it would be just to deprive this city of the natural geographical advantages she possesses, and inflict punishment on her simply because her citizens had the enterprise and push to make her the center of several important railroads.

Macon competes with the cities of Savannah, Augusta, Columbus, and Atlanta for business in the same territory, and is practically the same distance from the East and West as Augusta.

#### ATLANTA, GA.

The testimony of Messrs. Powers and Ogden give a very interesting account as to how Atlanta became the leading commercial center of the State of Georgia. The people of Georgia, through the legislature, as early as 1835, inaugurated a system of internal improvements, which resulted in the construction of a number of leading railroads centering in Atlanta. What is now the city of Atlanta, we are told, was then known as Cross Plains, and what is now the city of Chattanooga was then called Ross' Landing. The construction of the Western & Atlantic road was commenced in 1836; completed to Dalton, Ga., one hundred miles, in 1846, and finished to Chattanooga, on the Tennessee River, one hundred and thirty-eight miles, in 1850. This railroad was constructed with money appropriated by the legislature of Georgia. It is still the property of the State, but being operated under a lease to an organization known as the Western & Atlantic Railroad Company. The lease will expire within the next three years, and the control of the property revert to the State. While the Western & Atlantic road was being constructed, the Georgia Railroad and Banking Company built a railroad from Augusta to Atlanta, a distance of one hundred and seventy-one miles. This road was finished in 1845. The South Carolina Railroad had already completed its line from Charleston, S. C., to Augusta, Ga. The Central Railroad of Georgia having completed a line in 1843 from Savannah to Macon, the Macon & Western Railroad Company built a road from Macon to Atlanta in 1846. Thus, under the influences of a movement inaugurated by a convention at Milledgeville in 1835, then the capital of the State of Georgia, the insignificant village of Cross Plains became the leading railroad center of the State. I know of nothing on record in the history of the development of the South where a little cross-road village, perhaps not even a village, had at as early a date as 1846 two important railroads leading to the South Atlantic coast, and another pointing toward the great West.

These important railway enterprises, inaugurated under the inspiration of the day, gave to Atlanta an impetus which was obliged to put her to the front. These railroads were constructed by the people of Georgia; one of them was built outright by the State, and for many years operated by the State. These roads were controlled by the people who built them; the stockholders, boards of directors, and the managers, all resided in the various portions of the State, at intermediate as well as terminal points. The basis of adjusting rates, which made the city of Atlanta a commercial center, was inaugurated under their auspices and directions; men who would scarcely, forty years ago, have dreamed that their efforts to build up a great railway center in the State of Georgia

would be pronounced by the average politician (not statesman) of to-day as gross acts of extortion and discrimination.

In 1857 the Atlanta & West Point Railroad Company, extending from Atlanta to West Point, Ga., was built. As early as 1854 the line from Montgomery, Ala., to West Point, Ga., was completed, thus giving to Atlanta another connection with the seaboard via Montgomery and the Alabama River through the port of Mobile.

In 1873 the road from Charlotte, N. C., to Atlanta, Ga., known as the Atlanta & Charlotte Air Line, was finished, connecting at Charlotte with the Richmond & Danville system.

In 1881 the Georgia Pacific Railway Company bought what was known as the road-bed of the Georgia Western Railroad—in the construction of which the citizens of Atlanta had contributed about \$300,000. The people of Atlanta sold this road-bed for a nominal sum (about \$35,000) in order to insure the completion of the line. The Georgia Pacific Company constructed this road to Birmingham, Ala., a distance of one hundred and seventy-seven miles, which road has now completed its extension to Columbus, Miss., and is now operating three hundred and thirteen miles.

In 1882-'83 the East Tennessee, Virginia & Georgia extended its line from Rome to Atlanta, from Atlanta thence to Macon, connecting with the line which it had bought from Macon to Brunswick, Ga.

#### CHATTANOOGA, TENN.

Chattanooga is located on the Tennessee River; originally known as Ross' Landing. What volume of business was transacted at this point prior to the construction of railroads is not known, although it had all the advantages of river navigation on the Tennessee River by steamers plying between Knoxville, Tenn., and the head of Mussel Shoals near Florence, Ala., a distance of about four hundred miles, where, through the medium of a short horse-railroad around the Shoals, communication was made with the Lower Tennessee River packets, connecting with the Ohio and Mississippi river packets at Smithland, Paducah, and Cairo.

The first railway built into Chattanooga was the Western & Atlantic, built by the State of Georgia, and completed in 1850.

The second, the Nashville & Chattanooga Railroad, extending from Chattanooga to Nashville, Tenn., completed in 1854, giving direct communication with the Cumberland and other navigable Western rivers.

The third, the East Tennessee, Virginia & Georgia, extending from Chattanooga to Bristol, Tenn., completed in October, 1856.

The fourth, the Memphis & Charleston, extending from Chattanooga to Memphis, and at that point connecting with the Mississippi River steamers, completed in 1858.

The fifth, the Alabama Great Southern Railroad, extending from Chattanooga to Meridian, Miss., chartered in 1853, and the whole line completed in 1871.

The sixth, the Cincinnati Southern, now the Cincinnati, New Orleans &

Texas Pacific, extending from Chattanooga to Cincinnati, completed in February, 1880.

The seventh, the East Tennessee, Virginia & Georgia extension, from Chattanooga through Rome and Atlanta to Macon, Ga., completed in 1882.

Being located on Tennessee River and the western terminus of the Western & Atlantic Railroad, completed in 1850, it goes without saying that the importance of Chattanooga dates from that period; that the Western & Atlantic road made Chattanooga a distributing center for the large territory covering the four hundred miles traversed by the boats on the Tennessee River between Florence, Ala., and the head of navigation; and the completion of the Nashville & Chattanooga road in 1854 only served to add to the commercial importance of that city as a trade center.

Chattanooga is no longer a mere village; it is a city of great importance. In addition to its importance as a commercial trade center, it has large manufacturing interests, consisting of rolling-mills, foundries, machine-shops, furnaces, etc., all of which have grown up during a period of thirty-seven years.

I attach no importance to the effort of the Queen and Crescent management to localize the business of Chattanooga. The city is of sufficient importance to speak for herself. She is no mere railroad crossing, "where there are no people living, and nothing but grass." Chattanooga is a city of enterprise and push, fully entitled to hold what her people have for thirty or more years struggled to acquire. And, Mr. Chairman, as already indicated, I do not see how it is within the power of the act "to regulate commerce" to prevent the city of Chattanooga from maintaining her position as a commercial center.

The cities of Nashville and Chattanooga are both in the State of Tennessee. Nashville is a distributing point, having connection with all of the leading Western cities via the Cumberland, Ohio, and Mississippi rivers. The Nashville, Chattanooga & St. Louis road can send business from Nashville to Chattanooga at any rate she may see fit, and Chattanooga, being the southern terminus of its road, will feel an interest in doing full justice by Chattanooga.

Chattanooga also has a connection with the Western rivers via the Memphis & Charleston, through Florence, on the Tennessee River, a navigable stream all the year round. There is no intermediate business between Florence and Chattanooga through Alabama which would be affected, and the Memphis & Charleston is likewise interested in enabling Chattanooga to maintain her position. This is an important phase of the question. It might look as though it were an attitude of defiance to the law, but I beg to assure you, Mr. Chairman, that such is not the case. I am simply endeavoring to show that the city of Chattanooga has advantages of which she ought not and can not well be deprived.

#### KNOXVILLE, TENN.,

Is located on the Tennessee River, and we are informed was a distributing and jobbing point of considerable importance before it had any railroads. As early as 1840 it had a large jobbing business, and up to 1854 there were as many as eighteen steamboats running regularly between Knoxville and the head of the Muscle Shoals, near Decatur, Ala, some of them quite large, having accommo-

dition for as many as a hundred and fifty passengers. Prior to 1854 freight came to Knoxville from New York via New Orleans, and from Pittsburgh via the Ohio and Tennessee rivers, at rates as low as \$1.00 per one hundred pounds, and a very much less rate on sugar and coffee from New Orleans. The route was via the Mississippi, Ohio, and Tennessee rivers to the foot of Muscle Shoals, near Florence, Ala., connecting with the Upper Tennessee River boats at that point by a short horse-rail haul around the Shoals. The testimony shows that Knoxville had eight jobbing and wholesale houses before a single railroad was completed to that city; that she distributed goods then to about the same territory she serves now; that she has at present about \$5,000,000 invested in the merchandise jobbing trade, and that the city by virtue of her geographical position has a large tributary territory in East Tennessee, North Carolina, and South-western Virginia, which depend upon her for their supplies.

The first railroad built into Knoxville was the East Tennessee & Virginia, from Knoxville to Bristol, a distance of one hundred and thirty-one miles; completed in July, 1855.

The second, the East Tennessee and Georgia, extending from Knoxville to Chattanooga, one hundred and eleven miles, completed in October, 1856.

The third, the Knoxville & Augusta, designed to connect Knoxville with the port of Charleston, S. C. Sixteen miles of this line was built and has been in operation since 1867.

The fourth, the Knoxville & Ohio, extending from Knoxville, Tenn., to the Kentucky State line, completed in 1882, connecting at Jellico, Ky., with the Louisville & Nashville system. It is proper perhaps to say that the railroads centering at Knoxville are practically controlled by the East Tennessee, Virginia & Georgia and the Richmond & Danville systems; but it does not follow, because this is true, that the city of Knoxville should be deprived of the advantages she had before a single railroad was constructed; in other words, that the construction of the several railroads to and from the city of Knoxville should operate to deprive her of the advantages she had before these railroads were built.

#### ROME, GA.,

Is located at the confluence of Oostanawla and Ettawah rivers, these two forming the Coosa River. We are informed by the evidence that Rome was a distributing point for merchandise long before railroads were built, and was also a large cotton shipping point; that the merchandise was shipped in and the cotton shipped out by steamers plying between Rome and Wetumpka. There being shoals—or falls—near Wetumpka, the merchandise and cotton was carted around the falls, connecting the steamers of the Coosa and Alabama rivers in that way. After the completion of the Western & Atlantic Railroad by the State of Georgia from Atlanta, Ga., to Dalton, the people of Rome built a line from Kingston, on the Western & Atlantic, to Rome, Ga., distance twenty miles. This little road was opened for traffic in December, 1848. Connecting with the State road of Georgia, and through that road with lines via Atlanta and the ports of Charleston and Savannah, and subsequently with lines via Chattanooga to Nashville and the West, and via Knoxville to the Virginia ports, this little

road of twenty miles has been a most important factor in enabling the people of Rome not only to hold the business they had built up by means of water transportation but to increase their traffic. It is proper to say that this road is still owned by the citizens of Rome and others in the State of Georgia.

In 1870 the Selma, Rome & Dalton road, now a part of the East Tennessee, Virginia & Georgia system, was finished from Rome to Selma, a distance of two hundred and thirty-five miles.

In 1882 the East Tennessee, Virginia & Georgia system completed a line of road from Rome through Atlanta to Macon, Ga., a distance of one hundred and sixty-two miles, and also built a link of road making a direct line between Rome and Chattanooga, Tenn.

These several railroad lines, reaching to and from the Virginia, Georgia and South Carolina ports and Western markets, have not detracted from the importance of Rome as a commercial center, but simply gave increased facilities to the business of Rome and the country tributary to Rome. There are now five steamers on the Coosa River, with which the railroads centering at Rome connect. To advance the rates to and from Rome would simply result in compelling the people of that city, and on the Coosa River, to pay more for their supplies and pay higher rates of transportation to get their cotton to market. That Rome was a large distributing center before railroads were built does not admit of doubt, and I submit if it would be right to deprive her of the advantages she enjoyed prior to railway construction, simply because she was more fortunate than intermediate points in having natural advantages and securing railroad transportation facilities which such points do not enjoy.

#### ALBANY, GA.

This city is located on the Flint River, a navigable stream, for the improvement of which Congress has appropriated \$117,000, and we are informed was a distributing center before any railroads were constructed, handling large quantities of cotton and supplying the country tributary with merchandise.

The first railroad built into this city was the Southwestern, now a part of the Central of Georgia system, extending from Albany to Macon in the East, and to Eufaula and Columbus in the West, completed in 1851.

The second was the Brunswick & Albany, extending from Albany to Brunswick, Ga., on the coast, completed in 1868.

The third was the Savannah, Florida & Western, connecting Albany with Jacksonville, Fla., and Savannah, Ga., completed in 1870.

In adjusting rates to and from Albany, the rail lines have merely recognized the advantages which this city enjoyed before railroads were built, and the competitive elements which were sufficient to enforce such an adjustment.

#### ANNISTON, ALA.

This enterprising and manufacturing city, the center of the charcoal iron producing region of the State of Alabama, is located on the Selma, Rome & Dalton road, now a part of the East Tennessee, Virginia & Georgia system, about midway between Rome, Ga., and Selma, Ala. Its first road, the Selma, Rome & Dalton, was built in 1870.

The Georgia Pacific, three hundred and thirteen miles long, extending to Atlanta in the east and Columbus, Miss., in the west, was completed to Anniston in 1882.

The Anniston & Atlantic Railroad, fifty-three miles in length, extending from Anniston to Talladega, Ala., was completed in 1883. Large sums of money have been invested at Anniston based on the present adjustment of rates. It would bring a very great hardship to this city and to the people who have invested their money to enforce the fourth section of the act. This city competes with Atlanta, Rome, Birmingham, and Montgomery for trade.

#### EUFULA, ALA.

The city of Eufaula is located on the Chattahoochee River, a navigable stream, which furnishes active competition to the railroads centering at that point.

Congress has appropriated \$429,750.29 for the improvement of this and the Appalachian rivers, through which the Chattahoochee finds an outlet to the coast. There can be no doubt but what the city of Eufaula occupies a very advantageous position, and that she occupied this position prior to the construction of railroads.

The first railroad built into Eufaula was the Southwestern, now a part of the Central Railroad of the Georgia system, extending from Eufaula to Macon, Ga., completed in 1851.

The second, the Montgomery & Eufaula Railroad, extending from Eufaula to Montgomery, completed, 1870.

The third, the Eufaula & Clayton, extending from Eufaula to Clayton, Ala., completed in 1872.

The great improvements in the navigation of the Chattahoochee River, and the active competition between steamboat lines on that river, has at times resulted in very low rates. The rates on first-class freight from New York to Eufaula via the Chattahoochee River lines have been, within the past eighteen months, as low as fifteen cents per one hundred pounds.

#### COLUMBUS, GA.

The city of Columbus is located at the head of navigation on the Chattahoochee River, only a short distance above Eufaula. This city enjoys the same water transportation facilities which are enjoyed by the city of Eufaula, and is one of the most enterprising cities of Georgia; being one of the pioneer cities of the South in the manufacture of cotton goods, which is being carried on to a large extent, and increasing every year. This city has a large trade with the contiguous territory and with points on the Chattahoochee River, especially in Western produce.

The first railroad built into the city of Columbus was the Southwestern, extending from Columbus to Macon, Ga., completed in 1851.

The second, the Mobile & Girard, extending from Columbus to Troy, Ala., a distance of eighty-five miles, completed in 1872.

The third, the Columbus & Western, extending from Columbus to Goodwater (now being extended to Birmingham, Ala.), completed in 1874.

The fourth, the Columbus & Rome, projected to extend from Columbus to Rome. Completed from Columbus to Greenville, a distance of fifty miles, in 1885.

The fifth, the Georgia, Midland & Gulf Railroad, projected to extend from Columbus to Athens, Ga., a distance of one hundred and sixty miles, now being constructed.

The evidence of Mr. Hockstrasser, who appeared before the Commission at Atlanta in behalf of Columbus, very clearly indicated the situation. He said in substance: "What we ask you to do is to let these railroads alone. We do not ask the railroads to make us any rates into and out of Columbus; we will compel them to make us rates. We have ample competition on the Chattahoochee River to compel the railroads to give us the benefit of competitive rates."

What Mr. Hockstrasser said of Columbus will apply with equal force to the situation at Eufaula.

I have no figures before me, but it is undoubtedly true that the citizens of Columbus, like the citizens of other commercial centers of the State of Georgia, contributed large sums of money for the construction of these several railroads, and it would be a great hardship to the people to deprive them of the competition which they have paid to secure, as well as a hardship upon the railroad companies to be obliged to practically withdraw from competition for this traffic and transfer it to the steamboats on the Chattahoochee River.

#### FORT GAINES AND GEORGETOWN.

The towns of Fort Gaines and Georgetown are located on the Chattahoochee River. The one immediately on the opposite side of the river from Eufaula, and the other a short distance below Eufaula.

The Southwestern Division of the Central Railroad of Georgia was completed to these points in 1851. They both have the same river facilities enjoyed by the cities of Eufaula and Columbus, and both towns compete with Eufaula and Columbus for the trade on the Chattahoochee River.

#### MERIDIAN, MISS.

The first railroad constructed to Meridian was the Mobile & Ohio, four hundred and ninety-three miles in length, extending to Mobile in the South and to Cairo, Ills., in the North. The road was completed in 1859.

The second, the Selma & Meridian, now a part of the East Tennessee, Virginia & Georgia system, extending from Meridian to Selma, Ala., was completed in 1859.

The third, the Vicksburg & Meridian, extending from Meridian to Vicksburg, on the Mississippi River, a distance of one hundred and forty-two miles was completed in 1868.

The fourth, the Alabama Great Southern, now part of the Cincinnati, New Orleans & Texas Pacific, extending from Meridian to Chattanooga, Tenn., two hundred and ninety-six miles, completed in 1871.

The fifth, the New Orleans & Northeastern, part of the Cincinnati, New

Orleans & Texas Pacific, extending from Meridian to New Orleans, one hundred and fifty-five miles, completed in 1883.

This city has been a commercial trade center for many years. Being in close proximity to Vicksburg, Miss., it is clear that shipments from all points can be made by river to Vicksburg, and, with a short rail haul of one hundred and forty miles from Vicksburg to Meridian, can and will be delivered to Meridian at competitive rates.

It is well known that the city of Vicksburg is quite a commercial center, and that the management of the Cincinnati, New Orleans & Texas Pacific Company has been trying to make it a large distributing point, and has insisted upon the right to fix such rates from Vicksburg to Mississippi points as it may deem fit, not being restricted by the Mississippi laws from carrying freight at less rate for a long than for a shorter distance. The enforcement of the Interstate Commerce Act will have the effect of largely aiding the Cincinnati, New Orleans & Texas Pacific road in making Vicksburg such a center for the sale of Western products to Meridian and other Mississippi points, and thus the enforcement of the fourth section of the act would not deprive Meridian of the advantage of competitive rates, but simply transfer the business from the West, and leading to the West, to Vicksburg for the benefit of Vicksburg and the Cincinnati, New Orleans & Texas Pacific Company, to the detriment of the Mobile & Ohio and other lines running to the West. In this view of the case it can readily be seen why the Cincinnati, New Orleans & Texas Pacific is favorably inclined to the enforcement of the fourth section against all intermediate points not favored with direct water competition.

#### JACKSON, MISS.

The first road built into Jackson, Miss., was the New Orleans, Jackson & Great Northern, now part of the Illinois Central system, extending from New Orleans through Jackson to Canton, Miss., completed in 1860.

The Vicksburg & Meridian road, extending from Meridian to Vicksburg, through Jackson, was completed in 1868.

The Natches, Jackson & Columbus road, extending from Jackson to Natchez, one hundred miles, was completed to Jackson in 1882.

The Yazoo City & Mississippi Valley Railroad, extending from Jackson to Yazoo City, Miss., forty-five miles, was completed in 1884.

The city of Jackson is only forty-four miles from Vicksburg; hence what has been said of Meridian will apply with equal if not greater force to Jackson, Miss.

#### COMMERCIAL CENTERS A NECESSITY.

There are a number of other points, Mr. Chairman and gentlemen, on behalf of which applications for relief have been made, and which are fully entitled to relief. There may be some which are not entitled to such relief, but I am fully persuaded that the several points I have discussed are so situated that relief should not be withheld. Comparing the statement of facts as to how, when, and why the commercial centers of the South were created with the testimony of Major Gault as to how such centers were created in the West,



it will be seen that the circumstances and conditions which created these centers in the South are totally different from the circumstances and conditions which created the trade centers in the West. The Southern States were in existence and the South was inhabited many years before the Western territory was explored—indeed, before the Great West of to-day was known to civilization or even dreamed of. Nearly all of the cities in the South to which I have invited your attention, and in whose interest relief has been applied for, were commercial or trade centers before many of us were born; and the cities of Atlanta and Chattanooga, which seem to have been the especial points of attack by Major Gault, were trade centers while he was yet a mere swaddling. How these cities became trade centers has been fully detailed. The majority of them were so situated before railroads were built, and the construction of railroads has added to their importance only to the extent that the railroads have developed the interior country tributary to them. I insist, Mr. Chairman, that no effort has been made by the railroads of the South to establish trade centers at the expense of the interior, and that the railroads, when they reached these trade centers, simply adjusted rates of transportation to meet the existing condition of things. It will not be assumed that railroads are not entitled to a just and reasonable compensation for the transportation facilities they furnish communities which they are endeavoring to serve. It will not be claimed that the railroads of the South are collecting excessive rates of transportation on the traffic moved to or from interior local points; and it must be conceded that railway transportation companies are entitled to charge what the service is worth, and that the service at a local point is worth more than at a competitive point. What I mean is, that at a point where there is no competition transportation is worth a just and reasonable compensation, and at a point where there is competition between two or more lines transportation is worth only what it will bring, and the more active the competition the less the value of the transportation. The competitive forces with which the railroads of the South have had to contend are very extraordinary as compared with any other section of the United States. The several States east of the Mississippi are traversed by numerous rivers, which furnished transportation facilities to the people of the South years before any railroads were built, and which have furnished competition to the railroads ever since they were constructed.

Congress has appropriated large sums of money for the improvement of these rivers. These vast sums, appropriated especially for the improvement of the rivers of the South, embracing the States of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, Virginia, and North and South Carolina, have improved the extraordinary transportation facilities enjoyed by the commercial trade centers of the South, and have largely aided in diminishing the value of the transportation at these centers, and have at all times fixed the limits of rates charged by the rail lines.

I was much impressed, Mr. Chairman, with the testimony relating to the business customs of the South. Of course I knew what the custom was, but such forcible illustrations as we had given us at Atlanta, Memphis, and other points only served to impress upon my mind the importance of commercial trade centers, and the great value and convenience of such centers to the

masses. Col. Hanson, of Macon, Ga., explained this to us at Atlanta. Gen. Patterson, representing the Cotton Exchange of Memphis, explained it to us at Memphis, and Mr. Penzel, of Little Rock, gave a very clear explanation. I can do no better than to give his testimony on the subject:

"One peculiar thing, perhaps, in the Southern States—I don't know whether it is so in other States—the small country dealer sells the consumer, and is to a large extent dependent, perhaps, on the merchant who does the furnishing business. These men are not able to go abroad, where they have no standing or credit; they are confined to home trade. If the freight rates become so much higher to any of those trade centers, of course the merchant computes the first cost on the goods and his freight. The increased freight necessarily enters into the cost price, and the small dealer and consumer naturally have to pay more for their supplies, and in consequence they suffer as well as the trade centers. In other words, they are taxed more than they were taxed before."

Referring to the cotton trade he said:

"The producers or small dealers are able to pay local freight into Little Rock, either by wagon or by railroad, and market their cotton there themselves, thereby saving all the commission, insurance, warehouse charges, etc. They go in and sell it and get their money for it right away and go off. If the Little Rock rate had to be equally as high as the local rate, the people would have to stand that or ship to distant markets, where they are exposed to all the charges of insurance, commission, etc., and very often exposed to great inconvenience by not being able to get their money."

This is the general custom of the South. The principal products of the soil in the South transported are leaf tobacco and cotton, while the principal product of the West is grain of all descriptions. In the West a farmer may take a sample of his wheat, corn, or other grain from the field to the nearest town and sell the whole crop by that sample, shipping it from his station to any consuming market the purchaser may designate. No such transaction would be admissible in the cotton and tobacco growing region. Every bale of cotton grown is sampled, weighed, and classified on its own merits, and is sold by that sample. It is only after it reaches a commercial center that the cotton coming from the interior in quantities to that center is classed, in round lots of one hundred to one thousand bales, and sold for shipment to consuming markets. Such classification and sales would be impossible at local stations, moreover cotton for shipment to distant markets must be compressed; there is not a sufficient quantity at local stations to warrant the erection of compresses, and hence, if for no other reason, the cotton from local stations must go to trade centers. A large number of local points handle only a few hundred bales, the largest but five to ten thousand bales. A suitable compress can not be erected and operated at any point at a profit upon the investment when the receipts of cotton fall below twenty thousand bales per annum.

Leaf tobacco is marketed in a like manner. The tobacco is gathered and put into hogsheads by the planter; it is then shipped to market, where the casings of the hogsheads are removed, and samples drawn from three or four different portions of the hogshead by a sworn inspector, an officer created under the laws of the States. Every hogshead is sold on its merits by each individual sample. In Tennessee and Kentucky this sale is made through the medium of an auctioneer, and I think this is also true of Virginia and other tobacco-growing States. A leaf-tobacco sale is really an interesting sight. Sales in these

centers, such as Clarksville, Louisville, and Nashville, are made usually every day. The warehouses in each city rotating in the sales, so that no two houses sell at the same hour the same day. All the buyers congregate around the one hoghead or sample which is being cried off by the auctioneer, and in this way (it is quick work) from one to two ~~hundred~~ <sup>thousand</sup> hogheads are sold in large markets each day during the busy season. The buyers for Spain, Italy, Liverpool, Bremen, and other consuming markets, of course congregate at those centers where they can buy in large quantities, so as to make shipments in round lots of one to five hundred or a thousand hogheads each. They could not be induced to go to interior stations where receipts are small.

Convenient commercial centers are, therefore, a necessity to the cotton and tobacco trade of the South. These products can not be concentrated in any other way so as to admit of satisfactory sale.

I had the pleasure of traveling with an Arkansas planter on my way to this city. His views impressed me with the importance of commercial centers. Said he, "We want to trade near home." He lived a short distance from Little Rock, and raises annually about four hundred bales of cotton—a pretty big plantation for that section. "My dear, sir," said he, "it would ruin me if I had to trade any where else but Little Rock. I want to do business with people I know; I want to be sure that my cotton is properly classified and sold; I don't want to ship my cotton to New York, New Orleans, or Liverpool; I want to place my cotton in the hands of men I know; men who will advance me money to make my crops if I need it. Twenty-five or fifty cents a bale is a small matter to me if I know I am getting justice; if I know the man with whom I am trading; if I know he is the right sort of man, and will classify my cotton rightly and account to me for every dollar." These views were expressed in a casual way, and yet I am sure they represent the general views and customs of the South.

It is clear, therefore, that any advance in rates to and from the commercial centers would seriously affect the people residing at the interior towns. These people pay local rates to and from such interior markets to the centers, and any advance of rates to and from the commercial centers would not only reduce the value of the product they sell but increase the cost of the supplies they purchase.

#### SOUTHERN PORTS AS COMPETITORS.

In the further discussion of this question it is hardly necessary for me to refer at length to the commercial centers located on the Ohio and Mississippi rivers, or to the Gulf or South Atlantic coast ports embraced in this application for relief. Their advantages and surroundings are too well known to require any detailed argument from me.

Commissioner Walker: It is rather curious that Savannah, Charleston, Mobile, New Orleans, these Gulf ports to which the Southern roads make the lowest rates of any points on their line, should all of them substantially say that they want this law strictly enforced.

Mr. Stahlman: The people at these ports believe that the enforcement of the act against the interior will advance the rates from the interior, and pre-

clude the shipment on long rail hauls to and from the East and other distant markets, and therefore the business which the interior centers have been doing, and the cotton which they have been handling, will naturally drift toward the ports on short rail hauls, or float down the rivers and fall into their laps.

Commissioner Bragg: A man's hand was never plainer to his eye than that is.

Mr. Stahlman: One not familiar with the business of the South would suppose that these Southern ports were of great value to the railroad systems of the South. They are in some respects, but in the main they are competitors to the railroads. They are not to the Southern rail lines what the Eastern ports are to the trunk lines. The ports of New York, Philadelphia, Baltimore and Boston are feeders to the trunk lines. They do an immense business. Do any of these Gulf ports feed the Louisville & Nashville road? Assuredly not. It is a mere trifle as compared with the business furnished by the Eastern ports. The Southern ports import very little from abroad, so that the Southern roads realize but very little traffic and revenue from that source. The steamships entering the ports are engaged in the carrying trade between the Eastern ports and the South, and through the Eastern ports between the West and the South. It is safe to say ninety per cent of all the steamers which enter the Southern harbors are competitors to the rail lines instead of feeders. It is true they furnish an outlet for the products of the South, but that outlet is in the nature of a competitor to all of the interior Southern roads. The proof taken during the sittings of the Commission in the South shows very conclusively that a great deal of the competition between the South and the East and the South and the West is forced upon the rail lines by vessels plying between the Southern and Eastern ports at very low rates. Congress has, from time to time, appropriated \$5,483,571.62 for the improvement of these harbors. The railroad people have not complained, although these appropriations have added very materially to the competitive forces which they have been obliged to meet. The proof is clear, that many vessels entering the Southern ports come loaded with grain and other Western produce as ballast, and returning take naval stores, rosin, cotton, etc., for the East and West, in competition with the rail lines. But for this strong competition we would doubtless be able to arrange an adjustment of rates which would appear more equitable to the general public. But if we hope to do any business between the West and Southern ports we must take it at rates fixed by these competing lines. There is absolutely no escape from it. Of course the traffic carried to the ports works back into the interior, and thus fixes the rates to the interior.

#### COMPETITION FORCED UPON RAIL LINES BY NAVIGABLE RIVERS.

Let us now, Mr. Chairman, take up, in a general way, the competition which is forced upon the rail lines through the navigable rivers. I have already alluded to the vast appropriations made for the improvement of rivers which furnish active competition to the Louisville & Nashville Railroad. I have had a table carefully prepared, showing the appropriations made for the improvement of the rivers of the South traversed by the system of roads which have applied to you for relief, and the total sum, as shown by this table, is \$41,919,149.28. (See

Exhibit "A.") Now I assume that this vast sum of money was appropriated for the purpose of giving the people of those States increased transportation facilities and the benefits of competition. I do not believe these appropriations could have been made for any other purpose. Would it be right to practically deprive the people of the competition which this vast sum of money was designed to give? Surely such a thing could not have been contemplated by the enactment of the Interstate Commerce Act!

I have been very much interested, and really I may say amused, at the course of the people representing the river interests who have appeared before you and have asked that you enforce the law against the rail lines. They have come as though they were the objects of special favor; as though the law was designed for their benefit. Congress has always been so liberal in its appropriations to promote their interests that they have about concluded, no matter what Congress does, it is especially designed to help them. One would suppose from their appeals and pleadings that they were the embodiment of all that is pure and good. They dwell at great length, and with great emphasis, on the vices and iniquities of railway transportation lines, assuming for themselves a pharisaical garb. They know they have been the especial wards of the Government, and now seek to become masters of the situation. They appear as the advocates of the people, holding up their hands in holy horror because the railroads, where circumstances and conditions are dissimilar, are charging more for a shorter than for a longer haul, adroitly concealing, at the same time, their custom, which is even more pernicious; and I may say, more vicious. I say vicious, Mr. Chairman, and I will undertake to demonstrate that this is true. Nature has furnished these people a free right of way and road-bed. Congress has built for them their trestles, bridges, and laid their track, and is keeping their roadways and track in repair. These great highways have cost them nothing. The equipment is their only investment. It costs them less to build a steamboat than it does the railroads to purchase equipment capable of moving the same amount of tonnage.

Taking the line between Cincinnati and New Orleans as an illustration, we find—

Outside cost of steamer, 1,000 tons capacity.....	\$40,000 00
Cost of railroad equipment to move same quantity:	
2 engines, capacity 25 cars of 20 tons each.....	\$20,000 00
50 cars of 20 tons each.....	25,000 00
	<hr/> 45,000 00

Does any one for a moment suppose that a railroad company, with an investment of many millions in its right of way, road-bed, bridges, trestles, tracks, etc., and a sum besides for equipment equal to the cost of a steamboat, with an enormous expense in keeping up the road-bed, bridges, trestles, tunnels, etc., running over steep grades, etc., can live if it were to reduce its rates on intermediate traffic to the basis of rates established in competition with such a favored rival as this? Of course not. And yet this is what these gentlemen ask; but what they really want is that the law shall be rigidly enforced so that, as a measure of self-preservation, the rail carriers will be compelled to abandon traffic in competition with them.

I say I have been amused, Mr. Chairman; amused, it is true, but at the same time amazed at the effrontery of these men. I have taken some pains to look into their methods. It is fully explained in Mr. Culp's deposition, and I can do no better than to make that part of the deposition a part of my argument. I will file it as Exhibit No. "B." What a delectable crowd, to be sure! (I refer now to the class represented by Messrs. Bryant and Mossett, and not to Capt. Ryman and others, who were candid enough to state facts as they were while they were on the stand.) Appealing to this honorable Commission to oppress the railroads in their interest because, as they say, the railroads oppress the people, while they, at the same time, are using nature's great highways, improved with money from the public treasury, to oppress the masses in every conceivable manner.

This table and testimony shows that the steamboat lines on the Alabama, Arkansas, Cumberland, Ohio, Missouri, Upper Mississippi, and Lower Mississippi rivers are charging more for the short haul to intermediate landings than for the long haul to terminal landings. And on the very day, while Mr. A. J. Mossett, the representative of the steamboat interest, was at Atlanta appealing to this honorable Commission to enforce the law so as to protect the people, his representative and agent in Cincinnati was exacting the "pound of flesh" by charging much higher rates to all intermediate river points for short distances than to terminal points for a much greater distance—not to intermediate plantation landings alone, where they put off an occasional box or barrel, but to such important points as Friar's Point, Bayou Sara, Columbia, etc., where the business is large.

The railroads, they say, pool their issues, and combine to make war on them. Steamboats never pool their issues; they never combine; they never make war on any one! Oh, no, of course not! I suppose, Mr. Chairman, in the history of combinations in proportion to the amount involved, there have been none more formidable, none more selfish, than the combinations between water crafts.

The Southern Transportation Company, consisting of six steamers, representing the line between Cincinnati and New Orleans, of which Mr. Mossett is the accredited agent, is a combination of steamboats pure and simple. The boats are all owned separately, and pool their issues, and combine to prevent competition.

The Cincinnati and Memphis Packet Company, consisting of six steamers, is a combination of boats formed in the same way.

The Cumberland River Packet Company, consisting of five steamers, is established on the same basis. Look where you may and go where you will, and you will find these organizations, which are nothing more nor less than combinations between the different owners of steamboats, which pool their issues for the purpose of avoiding competition, and making a united war on such boats as may not see fit to enter these combinations. Even after these several combinations are made they divide their territory so as to not come in conflict with each other. For instance, the Upper Cumberland

River Packet Company will not compete for traffic in the Lower Cumberland, and the Lower Cumberland Packet Company will not compete for traffic in the Upper Cumberland, and the two will interchange traffic with each other but will not interchange traffic with any independent or outside steamers.

The Southern Transportation Company and the Cincinnati & Memphis Packet Company will not compete with the United States Mail Line for traffic between Louisville and Cincinnati; and the United States Mail Line in turn declines to compete for traffic destined to points on the river below Louisville. The Cincinnati & Memphis Packet Company will not compete with the Southern Transportation Company for traffic on the river between Memphis and New Orleans; and the Southern Transportation Company in turn will not compete for traffic on the river between Cincinnati and Memphis. The same is true of the steamers on the Mississippi above Cairo. All these interests agree among themselves to protect each other's territory, and all of them refuse to interchange traffic with outside steamboats.

But this is not all. When an outside boat makes its appearance in the trade between any particular points, it is the custom of these combinations to select a particular boat, commonly called a "Raider," which is to follow in the wake of the independent boat, or rather move with the movements of the independent boat, starting from the terminal point on the same day and at the same hour, landing at the same points at the same time, cutting the rates and keeping up the raid until the independent boat is vanquished or falls into line by joining the combination. This is the general practice on all of the navigable rivers, and yet these gentlemen, representing these combinations, appear before this honorable Commission in robes of white, innocent apparently as babes, pleading for the enforcement of the act to the end that rail competition may be removed and they be allowed to advance the rates and indulge to a greater extent in their nefarious practices.

#### CONGRESS DID NOT INTEND TO ENFORCE THE ACT IN COMPETITION WITH WATER CARRIERS.

Can it be that Congress intended to enforce the act against rail carriers and promote this state of things on the navigable rivers? I can not believe it. The article of the Constitution which gave to Congress the right to regulate commerce with foreign nations, and among the several States, certainly never contemplated any thing of this kind. The right to regulate commerce with foreign nations was designed to regulate the duties on imports and exports. The right to regulate commerce among the several States, I believe, was designed for a like purpose. In other words, designed to prevent either of the several States from levying duties on imports or exports passing from one State to another. I do not believe it was designed to regulate rates of transportation. But, assuming that the right to regu-

late commerce among the several States carried with it the right to regulate rates of transportation, the framers of the Constitution could not have had in view the regulation of transportation by railroads. When the Constitution was framed there were no grounds for supposing that there would ever be any railroads constructed. The Constitution was framed at least fifty years before transportation by railways was heard of. If, therefore, it was designed to regulate the rates of transportation, the framers of the Constitution could have had in view only transportation by rivers, lakes, and canals. It is fair to assume that Congress was not unconscious of this fact, and, having failed in the act to take supervision over transportation by water carriers, it is not unreasonable to conclude that Congress did not undertake to regulate, or rather restrict, transportation by rail in competition with the water carrier. This conclusion is warranted by the language of the act itself, which confines the long and short haul restriction to "the transportation of passengers or like kind of property, under substantially similar circumstances and conditions." That traffic carried in competition with water lines is not moved under substantially similar circumstances and conditions as traffic between intermediate local points where no competition exists will hardly be controverted.

The question may be asked, why then are you here asking relief? We are here, Mr. Chairman, in obedience to a doubt which surrounds all questions of legal import; we are here to express our views as to the construction of this act, and to ask, in case you do not concur in this view, that you give us the relief to which we are clearly entitled.

#### HOW IT EFFECTS THE LOUISVILLE & NASHVILLE RAILROAD ON SPECIAL CLASSES OF FREIGHT.

Mr. Chairman and gentlemen, I desire now to enter into a further discussion of this question so far as it affects the Louisville & Nashville Railroad. Let me again invite your attention to the testimony of Mr. Culp as to the volume of the business of the Louisville & Nashville Railroad which will be affected by the rigid enforcement of this act. It is not only the pig iron, the bar iron, the lumber, the coal, and the provision business, but it is the general business between local and competitive points.

#### COAL.

Take the coal business as presented, from the Alabama mines to New Orleans: We are trying to build up a business at New Orleans; the people of New Orleans are paying from one to two cents per bushel less for coal now than they were five or six years ago. Competition between the Alabama and Pittsburgh mines has forced down prices. We are charging higher rates to intermediate points than we are to New Orleans. If you say we can not make a lower rate to New Orleans than to intermediate points, you drive us out of New Orleans. We simply can not afford to compete for the New Orleans business.



We also have a growing coal traffic at Pensacola, Savannah, and points in Georgia, and we are supplying several railroads in Georgia with coal. On all of this traffic we charge less rates than we do to intermediate points. There is no telling to what extent this business can be increased if we are permitted to do so. But it would be very much diminished, in fact entirely cut off, if we are compelled to enforce higher rates.

From our Henderson Division in Southwestern Kentucky we are carrying large quantities of coal to Nashville, Clarksville, and Memphis, in competition with coal from the Tennessee and Pennsylvania mines. The latter floating down the Ohio River on barges, the former reaching the markets over purely State roads. If we are to charge as much on this traffic as we do on traffic to intermediate points, we will be obliged to abandon the business at Memphis, Nashville, and Clarksville, and this includes a large business the mines have built up by contracts to supply several Tennessee and Mississippi railroads, which coal is delivered to them at Milan, Humboldt, and Memphis, Tenn.

This competitive coal, as shown by Mr. Culp's deposition, is carried at a fair profit to the railroad company. A careful estimate shows that at least sixty per cent of the coal traffic of the Louisville & Nashville road from our Alabama and Henderson Division mines, aggregating a gross revenue of about \$800,000, will be lost under the rigid enforcement of the fourth section. The people of Memphis, Nashville, New Orleans, Mobile, Pensacola, etc., will be obliged to pay higher prices for their coal, the mining interests seriously crippled, if not ruined, and the poor miners of Kentucky and Alabama thrown out of employment. I do not believe that Congress ever intended to enforce this law in such a way as to cripple any particular interest, or to prevent a free interchange of traffic between the several States. If the framers of the Constitution meant any thing, they meant to guarantee to the people the freest interchange of traffic possible.

The Chairman: They intended to turn that subject over to Congress.

Mr. Stahlman: Very true; but I do not believe that the right to regulate commerce among the several States was designed to put restrictive measures on commerce between the States.

The Chairman: We do not deny that this law was framed to promote traffic and encourage competition. Do you find that purpose in the law?

Mr. Stahlman: I do not. Although the effect of the law, as rigidly construed by some who urged its passage, would as I have already shown, undoubtedly restrict competition. These men perhaps thought they were promoting competition, and that the rail carriers would give the benefit of competition to every little intermediate point. The members of Congress generally did not, in my judgment, agree in this view, and hence, when they were about ready to pass the bill, they coupled with it a provision for relief, and it is under this provision that we are seeking relief at your hands. The actions of some of the members of Congress reminds me very

much of an old fellow who owned a little steer. This steer was his hobby. I say this with great respect to Congress.

Commissioner Bragg: I must interrupt you one moment with this one word: Remarks reflecting upon the intelligence of Congress in the enactment of a law, I think are out of order addressed to a tribunal created by Congress. Congress, you know, is the supreme law-making power of this land.

Mr. Stahlman: I think the point is well taken. I am not a lawyer, and therefore liable to get a little off the track. Lawyers even do that sometimes.

#### LUMBER.

What I am endeavoring, Mr. Chairman, to show, is the effect of the rigid enforcement of this act upon the various kinds of traffic carried by the Louisville & Nashville Railroad. Let us now take the lumber traffic. Maj. Gault says this traffic will not be affected.

The Chairman: Explain that.

Mr. Stahlman: This is explained very fully on pages 28, 29, 30, and 31 of Ms. Culp's deposition, which is in substance this: That we have a large lumber traffic all along the line of our road between Mobile, Ala., and Louisville, Ky., including the Pensacola & Atlantic road between Pensacola and River Junction. At Nashville, Tenn., the industry is especially large. It has been developed within the past few years. The logs and lumber are floated from the Upper Cumberland and tributary rivers down to Nashville. Prior to 1880 nearly all of the lumber and logs were floated down the river past Nashville to the mouth of the Cumberland, and there distributed. About 1880 some enterprising mill-men concluded to establish a market at Nashville. They located mills and began manufacturing and shipping lumber. The lumber consists of oak, hickory, walnut, poplar, etc. At first they shipped largely by barges and steamboats to Evansville and Cincinnati. Later on the Louisville & Nashville road put in a line of rates which, with its other facilities, enabled it to share in this traffic. The business at this point has grown to such an extent that Nashville handled during the year 1886 about 125,000,000 feet. Competition is very strong. There is no difficulty in getting steamboats, rafts, and barges to transport this lumber down the Cumberland River. Our present rates have been virtually fixed for us by the steamboats and barges. Large shipments have been made from Nashville to Evansville by river during the past year, and we shall probably be obliged to make further reductions to compete with the rates by river. Any advance in these rates from Nashville to the intermediate rates would force the entire traffic by river. We bring a great many logs into Nashville from points South of Nashville, which are manufactured into lumber, and we thus get two hauls on a large share of this business—one into Nashville on the logs, and another out on manufactured lumber. These shipments of logs in and lumber out would stop if the local intermediate rates were charged. The same can be said

of the large pine lumber interests from the Pensacola & Atlantic and South and North Alabama, and Mobile & Montgomery divisions. The rates on this lumber to intermediate points are higher than to more distant points. That is to say the rates from Bowling, Ala., on the Mobile & Montgomery road are higher to Lynnville Tenn., and other intermediate stations than to Nashville, and higher to Cave City, Ky., and other intermediate stations than to Louisville. There seems to be an impression that the Southern roads are flooding the West with pine lumber to the exclusion of the lumber of other pine regions. Mr. Culp presents a table of rates from all points on our line to the leading points in the West, which shows that there is no rate as low as seven mills per ton per mile, while some of the lumber pays as much as 1.16 per ton per mile. Mr. Culp, speaking of these rates says:

"We undertake to make rates which will enable the manufacturers of this lumber to fairly compete in Northern, Western, and Eastern markets, with the pine and other lumbers of those sections. We do not make the rates unnecessarily low, or on a basis which does not yield to the transportation lines a profit; nor is it our aim to make rates which will destroy the lumber interests of other sections. To illustrate that the rates are not such as to destroy the lumber interests of other sections, I will say that we have brought large quantities of white pine lumber from Michigan to Nashville, and such articles as sash, doors, and blinds are sold all over the South in competition with like articles made from yellow pine and the poplar of the South. The policy of the railroad has been to fix such reasonable rates so as to allow a free interchange of product between the different lumber-producing sections."

#### GRAIN, FLOUR, AND PROVISIONS.

The next item of magnitude is grain and flour. We have some of this on the line of our own road, of which a limited surplus is shipped as shown on page 40 of Mr. Culp's deposition. We are obliged to make less rates for the long haul than for a short haul on this business.

To charge the same rates to Savannah and Charleston as are charged to Atlanta would prohibit our farmers from selling their products at Charleston or Savannah. We are obliged to make a less rate from our stations to the coast than to Atlanta, the same as we are obliged to do from Western points, not, however, for the same reasons. From Western points we make a less rate, because of the competition between rival transportation lines as well as rival markets. From our local points we make less rates, because, we deem it but fair to place our local producers on a footing to enable them to compete with other producing sections at the coast as well as in the interior.

This rule holds good as to Montgomery, Pensacola, and Mobile.

The Chairman: That is the necessity of the situation?

Mr. Stahlman: Yes, sir; and our people appreciate it. They know that the enforcement of this section will prevent them from reaching distant markets with their products.

The volume of Western products, including provisions and hay, transported over the Louisville & Nashville Railroad will aggregate 800,009 tons per annum. All this traffic is involved in the application for relief. The testimony is overwhelming that a large proportion of this traffic must be carried, if at all, at less rates to distant points than to intermediate points. And that this basis of rates is forced upon us by water lines over which we have no control.

The testimony given by Mr. Culp and others on behalf of the Louisville & Nashville Railroad clearly indicates that the rigid construction and the enforcement of the fourth section of the act to regulate commerce would cause a loss in the net revenue of the Louisville & Nashville Company of a sum approximating \$1,500,000. And that this loss can be made up only by a material advance of local rates, which would, in the end, seriously cripple the business interests of the country. Now, I submit, Mr. Chairman, with this state of facts, which can not be successfully controverted, how can this honorable Commission refuse to give the relief asked for?

#### POWER OF THE COMMISSION TO SUSPEND.

The Chairman: That comes right back to the question which I asked at the beginning. Where do you find authority in this law for the Commission to suspend that provision in six States of the Union, which is practically what you have asked in your argument so far?

Mr. Stahlman: I do not think it is. I have been discussing the question covering about thirty-seven points, which, in my judgment, should be made an exception. There may be, and doubtless are, quite a number of others.

The Chairman: Then all that region is to be made an exception?

Mr. Stahlman: That is my judgment, in so far as it applies to the points, which I have been discussing. My deliberate judgment is, that the whole South presents an exceptional case, differing in every material respect from other sections of the country.

The Chairman: Very likely that section is more seriously affected than any other, but even that does not reach the question.

Mr. Stahlman: If the circumstances and conditions are such that the enforcement of the law will prove a hardship upon any community or any railroad in any part of the country, my judgment is relief ought to be granted. If the general benefits to be derived from the suspension of the law are greater than by its enforcements in all such cases, relief ought to be granted, although it covered the whole country. I do not concur in the view expressed by some, that the law is here and ought to be rigidly enforced, regardless of the effect upon any particular interest or locality. I believe that where the injury, resulting from the enforcement of the fourth section, will exceed the benefit, that suspension ought to follow. The law must have been enacted for the general good, and where it fails to accomplish that purpose it ought not to be enforced.

The Chairman: All that may be, but still it does not reach the ques-

tion. Perhaps the law ought to be repealed, but where is the power? It certainly can not be in any administrative or judicial board.

Mr. Stahlman: The construction of the law on this point deserves important consideration, such perhaps as I may not be able to give. I do not believe that there is any thing in the law confining relief to exceptional cases; but assuming that to be true, I think I have already sufficiently indicated where the exceptional cases are to be found. I would take up each particular point and consider it on its own merits. Take the business between Cincinnati and New Orleans, Cincinnati and Memphis, Cincinnati and Louisville, Louisville and Nashville, Louisville and Montgomery, etc., and we find exceptional cases. Again, take Louisville and Atlanta, Louisville and Macon, Louisville and Savannah, and we have other exceptional cases—special cases, if you please, and the proof is overwhelming to show that these points ought to be relieved.

Commissioner Bragg: You do not see any thing in the law that limits the number of special cases which Congress intended the Commission to relieve, provided they are entitled to it?

Mr. Stahlman: No, sir; I do not. This question was discussed at great length, and in the Senate with a good deal of ability. Senator Cullom, who may be regarded as the father of the measure in its present form, speaking of the fourth section and the transportation of passengers and like kind of property under substantially similar circumstances and conditions, said: "As I understand them, the words 'circumstances and conditions' mean the conditions that govern railway traffic and the circumstances under which it is transported. To my mind these words are full of meaning. They comprehend all the circumstances and conditions that may justify differences in rates, such as competition with other railroads and with water routes, the volume and character of business at different points, the difference in terminal expenses, and the cost of service in each case."

Senator George thereupon put this question: "I understood the Senator to say—and that is what I want to have settled—that if one point from which the shipment is made is a competitive point, either by having a competing railroad or by having water transportation, and the other point from which the shipment is made is not a competitive point, then the circumstances are not substantially similar?" Senator Cullom answered: "I do say the facts should be considered."

Senator George then said: "With that construction of it I think the Senator gives away all the beneficial part of the bill."

To which Senator Cullom responded: "The Senator does no such thing. The fact to-day is—and I want the Senator from Mississippi to hear it—that there is an utter disregard by the railroads of the country of the circumstances; there are thousands and tens of thousands of shipments, made under exactly similar circumstances and conditions, where one is discriminated against and another is not, where one place is broken down and another is not, where one man gets rebates and another does not; and the purpose of the bill is to prevent that in so far as we may be able to do it *without crippling the commerce of the country.*"

The original Senate bill, Mr. Chairman, authorized the Commission to make exceptions and grant relief to common carriers in cases where there was competition by river, sea, canal, or lake. Upon motion of Senator Cullom this provision was stricken out, for the purpose, as Mr. Cullom said, that "*it simplifies the section and at the same time preserves all the power the Commission had before,*" and, as Senator Harris added, "*it gives a broader discretion to the Commission than it had before,*" in which expression Senator Cullom concurred. This means that while originally it was designed to confine the relief which the Commission might grant to points affected by competition, either by river, sea, canal, or lake, under the law as it now stands, the commission may give relief at points where there is competition by rail only, and that this relief should be granted at such points if the enforcement of the act would be likely to cripple the railroads or the business interests of the points thus affected.

Commissioner Morrison: You are asking us to restore the old order of things. Now, if that is so, why was that section put in there at all? What does the fourth section mean?

Mr. Stahlman: Exactly what Senator Cullom says, to prevent the carrying of traffic for a long distance at less rates than for a shorter distance to or from points where the "circumstances and conditions are substantially similar." There are said to be "thousands of places under exactly similar circumstances and conditions, where one is discriminated against and another is not, or where one place is broken down and another is not," but this, Mr. Chairman, can not be made to apply to points where competitive forces, either in the nature of sea, lake, river, canal, or railroad, produce entirely different "circumstances and conditions."

Commissioner Bragg: If Congress did not intend to promote competition among railroads by the act, why did it prohibit pools? Pools are known to nullify competition.

Mr. Stahlman: That is a clear proposition; that is what it was done for; that is the only argument against pools. There were no arguments against them except that they prevented competition.

Commissioner Morrison: You were candid enough to say, if you got the relief that you want, it would restore substantially the old order of things, and in restoring the old order of things you do not relieve any body at local points.

Mr. Stahlman: If you relieve us at terminal points, that relieves us to that extent at local points. In other words, the rates from local stations are based on the rates from competing points. If the rates come down to and from Nashville, they come down to and from all stations tributary to Nashville; if they come down from Birmingham it is the same way, they are scaled all the way along the line, and local points have the benefit of reductions.

The Chairman: I do not think any one in Congress supposed that this section would give the Commissioner power to suspend the law in one, two, three, four, or five States, at their option.

Mr. Stahlman: We are not asking that; we are asking it only in so far as the business interests and the competitive forces with which we have to deal demand such relief. The Louisville & Nashville and other Southern railroads, forming the Southern Railway and Steamship Association, traverse the territory south of the Ohio and east of the Mississippi rivers, embracing ten States. I append a table as Exhibit "C," showing that the railway stations in these States number 2,888, of these 184 are junction terminal points, and of this number the Southern roads have asked for relief at only *seventy-one* points, and I have discussed the question only as to *thirty-seven*.

I remember, Mr. Chairman, when, in 1881, I became connected with the Louisville, New Albany & Chicago road, a line extending from Louisville and Indianapolis to Chicago, four hundred and seventy-seven miles in length. Outside of the cities of Chicago, Indianapolis, and Louisville there was but one point on the line with a population exceeding five thousand inhabitants, and yet it had on its line twenty-four junction or competing points from which the rates were made less than from stations on either side. After an earnest endeavor, I succeeded, with the co-operation of the railroad managers of Indiana and Illinois, in making the rates from all of these junctions points except one, Lafayette, Ind., practically the same as from local stations.

The custom which prevailed on this road before I went there, prevailed largely all over the West, and I have no doubt but what members of Congress were aware of this fact, and that this state of thing gave rise to the belief that this practice was general in all sections.

The table I have presented shows that there are *one hundred and thirteen* junction and terminal points in the South on behalf of which no relief has been asked—points which have not been favored with competitive rates, because the circumstances and conditions did not seem to warrant such concessions. They are railroad crossings such as I have referred to, and such as were referred to by Maj. Gault in his testimony to and from which the Wabash and other roads in the West had been making less rates than from points at either side. These railroad crossings of the South, however, have *some* people and something *more than grass*, and yet the railroads of the South have refrained from indulging in practices calculated to give these points advantages over contiguous stations on either side. Of the one hundred and thirteen junctional and terminal points for which no relief has been asked, *twenty-six* are located on the line of the Louisville & Nashville road. So far as the Louisville & Nashville Railroad is concerned, nothing is clearer than that it has not indulged in the practice of building up one town to the detriment of another or discriminated in favor of one place or shipper to the detriment of another. The testimony taken during the sitting of the Commission will bear me out in the statement, that the Louisville & Nashville Railroad has treated the people on its line fairly, that rates of transportation to and from intermediate points have been ad-

justed so as to avoid discrimination between places similarly situated, while the rates to and from commercial centers have been established under the influences of strong competitive forces which the road could not afford to ignore.

The twenty-six junction points for which no relief is asked embraces Bowling Green, Ky., for example, a large town located on our line seventy-one miles north of Nashville, and at the head of navigation on Green River, a stream made navigable by locks and dams from its mouth, near Evansville, on the Ohio, to Bowling Green, Ky. The navigation on this river is at present controlled by a private corporation known as the "Green & Barren River Navigation Company." With the managers of this corporation we have been able to agree upon a reasonable adjustment of rates to and from Bowling Green, so as to avoid making rates lower than from intermediate stations on either side.

Congress during the last session was appealed to, and an act was introduced appropriating \$300,000 for the purpose of purchasing all the right and title of the "Green and Barren River Navigation Company" in the locks and dams on that river, so that navigation on that river might be free to all.

Decatur, Ala., is another point where the Memphis & Charleston Railroad crosses our line. We have been able, by agreement with the Memphis & Charleston road, to maintain as high rates to and from Decatur as from stations on either side. This town is located on the Tennessee River above the Mussel Shoals. We have some competition by river through Chattanooga, which, however, has only been spasmodic and not sufficient to cause us to reduce our rates to and from Decatur. But Congress has appropriated about \$3,000,000 for the purpose of removing obstructions at the Mussel Shoals. This work will be completed within the next twelve months, and will of course give us active competition by river at that point.

Now, I ask, after Congress has taken these large sums of money from the public treasury for the purpose of enforcing competition on the Louisville & Nashville Railroad at these points, if it would be right to say to this company that it shall not compete for traffic at these two points, or, if it does compete, that it shall be compelled to reduce its rates to intermediate local stations to correspond with competitive rates forced upon it at Bowling Green and Decatur through the action of Congress?

This, Mr. Chairman, is the gist of the question which runs all through the competition which the Louisville & Nashville is obliged to meet at all points, largely augmented by appropriations of money made by Congress from the public treasury.

Of the twenty commercial centers located on the Louisville & Nashville Railroad, which I have been discussing, and in the interest of which relief is sought, eighteen are on navigable streams, and the other two, Lexington and Birmingham, are so situated that, with the aid of purely State roads, the act to regulate commerce can not deprive them of the advantages they



now enjoy. These twenty points, then, are exceptional cases. They represent less than *one and a half per cent* of the whole number of railway stations in the States of Kentucky, Tennessee, and Alabama. If relief can be granted only in exceptional cases, you have them here fully and clearly set forth, and with ample reasons why relief should not be withheld. If you can not grant relief in these cases, you will be unable to find any cases where relief may be granted, and the provisions of the act which authorizes you to give relief will thus become a dead letter.

It may be said that this would give benefits only to the few to the injury of the many. Not so, Mr. Chairman; the many are equally involved in this relief. A refusal to give it to the few means a general disruption, a general revolution of the business relations which the people of the South sustain to each other. It means a general upheaval and a leveling process for which the country is not prepared. It means an untold loss of revenue to the railroads in the interest of water carriers, and a general advance of rates to the interior, which the many are ill prepared to bear.

It is useless, Mr. Chairman, to say that a refusal to grant the relief will benefit the interior; that the rates to the interior will be reduced to correspond with the rates to competitive points. It is simply out of the question; and I want to impress this fact upon this honorable Commission.

If relief is not granted, and the act is rigidly construed and enforced the railroads of the South will be obliged, as an act of self-preservation, to advance the rates to competing points, and such an advance will force the business to the water lines, and this large loss of revenue to the rail carriers can only be made up by an advance of rates to the interior.

#### PRODUCTS OF THE SOUTH COMPARED WITH THE WEST.

And this, Mr. Chairman, brings up another phase of the question. The Eastern and Western roads, it is said, are enforcing this act, and the question naturally arises, why can not the roads of the South do likewise? I think I have demonstrated, Mr. Chairman, in what respect the business of the South differs from the business of any other section of the country. These Southern trade centers for which we are asking relief were not made by the railroads, they were in existence before railroads were constructed. The business of the South is so entirely different from the business of other sections, that I have prepared some statistics which I desire to present, and which to my mind very clearly and forcibly illustrate the reasons why the roads of the East and West may enforce the law while the roads of the South can not afford to do so. I hold in my hand a table which I will file as Exhibit "D." This table shows the products of Ohio, Michigan, Indiana, Illinois, Minnesota, Iowa, Missouri, Kansas, and Wisconsin—nine Western States bordering on the territory covered by the Southern Railroad and Steamship Association. The products of these nine Western States, consisting of corn, wheat, etc., yield an average tonnage per acre of 1,603 pounds. Compared with this we have the products of nine Southern

States to wit: Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Kentucky. These States produce an average tonnage of only 602 pounds per acre, but of the products of the soil in the South, the exports or shipments which the railroads carry are confined exclusively to cotton and tobacco—there being very little surplus grain shipped, and that surplus very limited indeed, confined to only two States, Kentucky and Tennessee. Upon this point, I present a table which I will mark Exhibit "E." This includes corn, wheat, and oats produced in the West, and cotton and tobacco produced in the South. This table shows that the average tonnage per acre in the nine Western States is 1,366 pounds, while in the Southern States it is only 175 pounds. Thus a railroad in the West, fourteen miles in length, will secure as much tonnage as a railroad in the South of one hundred miles in length. It may be said in response to this, that if the people of the South produce so much less than the people of the West, they can ill afford to pay higher rates of transportation. The people of the South do not pay higher rates of transportation in the aggregate. It is hardly necessary to go into an extended argument on this point, but I want to illustrate by comparing some of the leading Western roads, in the grain growing region, with the Louisville & Nashville, which is generally conceded to be one of the leading railroads of the South. The earnings per ton per mile for the fiscal year ending in 1885, were

For the Louisville & Nashville.....	1.16c
For the Chicago & Northwestern.....	1.19c
For the Chicago, Milwaukee & St. Paul.....	1.28c
For the Chicago, Rock Island & Pacific.....	1.40c

But, Mr. Chairman, this table presents another fact. While it is true the tonnage to the railroads of the South, per acre, is only 175 pounds, as against 1,366 pounds to the railroads of the West, it shows that the cotton and tobacco of the South is worth to the producer \$15.27 per acre, against \$8.63, the average value of the corn, wheat, and oat crop of the West. I am aware that it costs more to produce an acre of cotton or tobacco than it does an acre of wheat or corn, but it is safe to assume that the difference in the products per acre will more than pay the difference in the cost of making the crop. There is another point, Mr. Chairman. The cotton crop of the South, moved largely uncompressed, will only load 24 bales or 12,000 pounds to the car, and the tobacco will only load 10 hogsheads, or 20,000 pounds to the car, while the grain crop of the West will load 40,000 pounds to the car, and even in cases where the cotton is compressed, it will not load to exceed 24,000 pounds to the car. Of course it costs relatively but little more to move a car of 40,000 pounds than it costs to move a car of 12,000 or 20,000 pounds. So that the Southern railroads in this respect are laboring under a very great disadvantage.

Commissioner Morrison: You give that as a reason why this is a special case justifying relief to all that country. Now, let us see if that would not force us to relieve another country further north. You mentioned that

there was a railroad building from Kansas City across the States of Missouri and Arkansas to Memphis, in the direction of Birmingham, where, of course, it will have an eastern connection over your road or some others. Now, at Kansas City you are right in that grain field, right in the pork-houses right at the point where they furnish all this tonnage. They reach out from Kansas City, circling to the north as far as Chicago, and get in that way, another eastern connection. Now, if we relieve your road through Tennessee and Alabama, up into Missouri and Kansas City, and then on to New York, shall we not have to do the same thing with the road that goes out of Kansas City through Illinois and Michigan, and on to New York in that way?

Mr. Stahlman: I do not understand that the relief applied for by the Louisville & Nashville Railroad will have the effect Col. Morrison suggests. For instance, we ask for relief on business from St. Louis and business from beyond. This means that if we are given relief on business from St. Louis to Savannah, that business from beyond delivered to our road at St. Louis may be taken on the same basis. It does not mean that the lines west of St. Louis bringing this business to us shall be authorized to avail themselves of the relief granted to us on business for the south to carry traffic in another direction. In other words, the relief applies only to business from St. Louis to the South.

Commissioner Morrison: According to your teaching, if we turn your road loose through the Southern country, and tie up all the other roads at Kansas City, would it not force the produce for the East over your road?

Mr. Stahlman: Not at all. That is not our design.

Commissioner Morrison: Would not that be the effect?

Mr. Stahlman: No, sir; it could not be in any event. Starting at Kansas City to go to Savannah or Charleston, the distance is about the same as to New York. (Distances, Kansas City to New York, 1,348 miles; distances, Kansas City to Savannah, 1,189 miles.)

The Chairman: Could you not carry freight in competition with those lines?

Mr. Stahlman: We might do so, but that is not our aim. All we ask is relief on business to the South, such as we are carrying to the South now to supply our own people. If there is any apprehension on this point, the Commission can fix the limit; it has ample power under the provisions of the act to "prescribe the extent" to which such relief shall apply.

#### EARNINGS OF SOUTHERN COMPARED WITH EASTERN AND WESTERN RAILROADS.

I have another table, Mr. Chairman, which I desire to file as Exhibit "F." This table likewise bears directly on the question as to whether or not the Southern railroads can afford to enforce the law simply because it is being done by lines in the East and West. This table makes a comparison between seven of the leading Eastern and Western roads and seven of the leading Southern roads. It shows the following:

Average tons freight carried per mile of road—	
Eastern and Western roads.....	11,853
Southern roads.....	2,327
Average number passengers carried per mile of road—	
Eastern and Western roads.....	7,926
Southern roads.....	1,204
Gross earnings per mile of road—	
Eastern and Western roads.....	\$12,166 93
Southern roads.....	4,184 47

Need I say more, Mr. Chairman? Have we not reached a point in this discussion where further argument is unnecessary? We have shown you:

1. When and under what influences the commercial trade centers of the South were created, and under what influences they are being maintained.

2. That these trade centers were not made by the railroads.

3. The strong competitive forces at work to compel the adjustment of rates now in vogue to and from these trade centers.

4. The vast sums appropriated by Congress from the public treasury which have served to augment the competitive forces with which the railroads are obliged to contend.

5. The absolute necessity to the railroads of the South of recognizing the existing conditions at these centers as they found them, and as they are to-day.

6. The utter impracticability of reducing rates to intermediate points on the basis of rates to competitive points.

7. The absolute necessity of advancing rates to the interior under the rigid construction of the fourth section of the act.

8. The disaster which will befall the manufacturing, commercial, and agricultural interests of the South by an advance of rates to the interior.

9. The character and customs of the Southern trade calling for convenient trade centers.

10. The character and volume of the traffic carried by the Southern roads as compared with roads in other sections.

11. That the products of the South have not been carried to distant markets at rates which do not insure to the rail carriers a fair profit.

12. That like products of other sections have had free access to the South upon equal terms.

All these things, Mr. Chairman, have been shown. We have shown also that the granite of South Carolina and marble of Tennessee have been carried to Louisville, Cincinnati, and other points East and West; while the granite of the East and the building stone of Indiana and other sections of the West has in turn been shipped into Tennessee, Georgia, and other Southern States.

That the hardwood and pine lumber of the South has been carried to the East and West, and the pine of Michigan and the mahogany of California, and the lumber of other sections have, in turn, in various forms been sold and shipped into the South.

That the early produce and vegetables of the South have gone to the Western and Eastern markets, and that like products of the West, later in the season, have found consuming markets in the South.

That Southern iron products have been shipped East and West, and that like products from the West and East have found markets in the South.

That the products of the cotton factories of the South have been shipped to Eastern and Western markets, and like products of the Eastern factories have been shipped freely into the Southern States.

That wagons manufactured in Tennessee and other Southern States have been sold in the West, and that wagons manufactured in the West have been shipped freely and sold in competition with wagons in the South.

That stoves manufactured in the South have been shipped to distant points in the East and West, including California, and that stoves manufactured at Cincinnati, Pittsburgh, and elsewhere have been sold freely in the South.

That the movement of the products of the farm and factory of the South has not been obstructed, and that the products of the farm and factory of the North, East, and West have had free access to the Southern territory on like terms.

All these things have we shown, and much more, which I need not now enumerate.

It is sufficient to say that the history of this investigation, impartially written, will demonstrate beyond question that the railroad managers of the South have labored earnestly and well to secure a free interchange of commerce among the several States; that they have not placed embargos on any business, but with an eye to what is just as between them and their patrons have adjusted rates of transportation so as to encourage and promote the material welfare of the masses, irrespective of classes or sections.

The people of the South who know us best appreciate this. The people living on the line of the Louisville & Nashville Railroad appreciate this. They came from local as well as terminal stations during the sittings of the Commission to manifest their appreciation by presenting memorials and testimony in favor of relief. They came from one end of the line to the other and said, "Do not enforce this law." They realize the situation. They know what effect it will have upon their business. They know what effect it will have upon the manufacturing and other interests of the South. They know the condition of our road. They know what effects the enforcement of the law will have upon the revenue of our road. They know that if we are forced to withdraw from competition, where competition exists, that we can not live without advancing our local rates; and they know that an advance in local rates means serious damage to the farming, the manufacturing, and the business interests of the country.

They know as well as we do that we can not afford to carry the business to and from intermediate points at the rates we are obliged to accept on

business between New Orleans and Cincinnati, between New Orleans and Louisville, New Orleans and Nashville, Memphis and Cincinnati, Memphis and Louisville, Nashville and Louisville, or Nashville and Montgomery. They know that the rates being made to these terminal points in competition with water carriers do not hurt them; but that it will inflict a great loss of revenue upon us to deprive us of the privilege of competing for this traffic.

More than all that, the people of the South are fair minded, they are not aggrarians, they are not communists, those residing at local points realize the fact that they have "built their houses on hills," and hence can not expect rates accorded to terminal competing points. I was much interested in a question put to a gentleman at Atlanta, who came before the Commission asking the suspension of the law; he lived at a local station between Macon and Brunswick, and was content with his lot. The question asked him was, "Would you not like to have Brunswick rates?" He said, "I would not object to it." Of course he would not object to it, and yet he was candid enough to say that he was not entitled to them.

This is the feeling, with an isolated exception here and there, throughout the entire South (outside of the ports, and we know why they feel differently). This is what the memorials and petitions mean, and the unanimity with which the people of the South came to our rescue is to me the most gratifying feature of this whole matter. I was myself surprised—agreeably surprised—when this Commission had finished its investigation, to find that there had been no more complaint. In the vast magnitude of a business covering eight or ten Southern States, embracing fifteen or twenty railway systems, it was to be expected that there should be some complaints; that some would complain of this and some of that; that some would demand one thing and some another. I undertake to say, Mr. Chairman, that there is not a business house in the city of New York, Philadelphia, Baltimore, or elsewhere, with a trade covering such a vast territory, although able to exercise the closest supervision over its business, which can show a cleaner record than the railroads of the South have shown. It is marvelous, and I feel proud of the fact, that the people of the South, during this investigation, have come to our rescue, and have said to this honorable Commission that the railroads have treated them fairly; that they are more than satisfied, and that the relief prayed for should be granted.

A word, Mr. Chairman, in respect to the act itself. I would not have this honorable Commission conclude that I have sought to make an attack, either directly or indirectly, upon an act which it is your duty to execute. In many respects the act is a good one. There are provisions in it which should commend themselves to all fair-minded people.

In these you are clothed with the power to prevent unjust discriminations between individuals.

To prevent discrimination between localities similarly situated.

To prevent the payment of rebates for the purpose of discriminations.

To prevent the cutting of rates.

To prevent extending favors in any form to one man, which may not be extended to another.

To prevent the frequent changing of rates, so injurious to commercial communities.

All of these features are good, and the enforcement of these provisions must result in much good.

I have now, Mr. Chairman, said about all that it is necessary for me to say. The views entertained by the management of the Louisville & Nashville Railroad as to the construction of the act are known to the Commission. In these views I fully concur. It is not necessary for me to deal with this phase of the question.

It has been my privilege and pleasure to participate in the investigation so far as it affected the interests of this company and it has been made my duty to present to you such facts as might have a bearing upon the issue involved. This duty I have endeavored to perform.

You now have all the facts as far as I am capable of presenting them. Should your decision be favorable, I shall feel gratified. Should it be the reverse, and thereby, as I believe, involve the railroads of the South in serious complications and the business interests in grave troubles, I shall have the satisfaction of knowing that I made an earnest effort, feeble though it be, to avert the disaster.

The question is now with you to dispose of in such manner as you in your best judgment may deem equitable and right.

For the many courtesies and kindnesses received at the hands of the honorable Commission, both here and elsewhere, I beg to make my grateful acknowledgements.

## EXHIBIT A.

### UNITED STATES GOVERNMENT APPROPRIATIONS TO WATER WAYS, as per record of Congress to States named below, from the beginning of the Government to and including the 49th Congress, 1885-'86.

ALABAMA.—	APPROPRIATIONS.	
Alabama River .....	\$145,000 00	
Black Warrior River.....	106,250 00	
Cahaba River.....	37,500 00	
Tallapoosa River .....	32,500 00	
Tombigbee River.....	63,750 00	
Warrior River.....	40,750 00	\$425,750 00
<b>GEORGIA.—</b>		
Altamaha River.....	55,000 00	
Etowah River .....	10,000 00	
Flint River.....	117,000 00	
Ocmulgee River.....	64,500 00	
Oconee River.....	32,500 00	
Oostanula and Coosawatter rivers.....	26,000 00	
Romley Marsh .....	37,475 00	
St. Augustine Creek .....	5,000 00	
Savannah River.....	676,096 64	
Surveys of rivers in Georgia.....	10,000 00	1,023,571 64
<b>FLORIDA.—</b>		
Appalachicola River.....	102,750 29	
Chipola River.....	9,000 00	
Calvosahatchie River.....	9,000 00	
Escambia River.....	3,000 00	
Indian River.....	6,500 00	
LaGrange Bayou.....	2,000 00	
Manatee River.....	20,000 00	
Ochlawaha River.....	10,000 00	
Ochlochnee River.....	5,000 00	
Pease Creek.....	16,000 00	
St. John's River.....	769,000 00	
St. Mark's River.....	37,530 00	
Suwannee River.....	38,000 00	
Upper St. John's River .....	5,000 00	
Volusia Bar.....	25,000 00	
Withlacoochee River.....	13,500 00	
Yellow River.....	500 00	1,081,780 29
<b>KENTUCKY —</b>		
Big Sandy River.....	235,500 00	
Kentucky River.....	762,500 00	
Ohio River.....	350,000 00	
South Fork of Cumberland River.....	12,000 00	
Trade Water.....	10,500 00	1,370,500 00
<b>LOUISIANA.—</b>		
Amite River .....	15,000 00	
Bayou Black.....	25,000 00	
Bayou Boeuf.....	20,000 00	
Bayou Bartholomew.....	15,000 00	
Bayou Courtableau.....	24,000 00	
Bayou Teche.....	75,700 00	



UNITED STATES GOVERNMENT APPROPRIATIONS TO WATER-WAYS.  
CONTINUED.

Louisiana continued.		APPROPRIATIONS.	
Bayou D'Arbonne.....		7,000 00	
Bayou La Fourche.....		32,500 00	
Bayou Terrebonne .....		35,800 00	
Brazos River.....		10,000 00	
Bayou Pierre.....		8,600 00	
Calcasieu Pass .....		30,000 00	
Calcasieu River.....		16,500 00	
Chifuncte River.....		7,500 00	
Cypress Bayou.....		\$18,000 00	
Ouachita and Black rivers.....		32,500 00	
Red River .....		225,000 00	
Tangipahoa River.....		11,500 00	
Tensas River and Bayou Macon.....		11,000 00	
Tickfaw River .....		4,000 00	
Tchefuncte and Bogue Falia rivers.....		40,000 00	
Vermillion River.....		9,900 00	\$674,500 00
<b>MISSISSIPPI—</b>			
Big Sunflower River.....		47,000 00	
Big Black River.....		10 000 00	
Bayou Pierre.....		5,000 00	
Coldwater River.....		11,000 00	
Horn Island Pass. ....		5,000 00	
Noxubee River .....		45,000 00	
Old Tom Creek ..		3,000 00	
Pascagoula River.....		125,400 00	
Pearl River.....		118,125 00	
Steel's Bayou.....		5,000 00	
Tallahatchie River.....		27,500 00	
Tchula Lake.....		9,000 00	
Tombigbee River.....		1,000 00	
Yallahusha River .....		11,000 00	
Yazoo River.....		158,000 00	581,025 00
<b>NORTH CAROLINA.—</b>			
Ashley River.....		1,000 00	
Black River.....		3,000 00	
Cape Fear River.....		2,299,478 92	
Conteantnia Creek.....		40,000 00	
Croatan Sound.....		50,000 00	
Currituck Sound.....		125,000 00	
French Broad River.....		5,000 00	
Lillington River .....		6,000 00	
Meherin River.....		5,000 00	
Neuse River.....		237,500 00	
New River.....		70,000 00	
Ocracoke Inlet.....		183,750 00	
Pamlico and Tar Rivers.....		68,000 00	
Pasquotank River.....		80 00	
Perquimone River.....		2,500 00	
Roanoke River .....		73,000 00	
Scuppernong River.....		8,000 00	
Town Creek.....		1,000 00	
Trent River.....		45,500 00	
Waccamaw River.....		4,400 00	
Water-way (Beaufort to New River).....		10,000 00	
Yadkin River .....		87,000 00	3,275,208 92

UNITED STATES GOVERNMENT APPROPRIATIONS TO WATER-WAYS.  
CONTINUED.

**SOUTH CAROLINA.—**

## APPROPRIATIONS.

Ashepoo River.....	1,300 00	
Ashley River .....	4,500 00	
Congaree River.....	7,500 00	
Edisto River.....	16,000 00	
Great Peedee River .....	47,000 00	
Santee River.....	75,750 00	
Salkelatchee River .....	10,000 00	
Town Creek and Stone River.....	7,500 00	
Waccamaw River.....	21,000 00	
Wappoo Cut.....	23,000 00	
Wateree River.....	35,500 00	249,050 00

**TENNESSEE.—**

Big Hatchie River.....	\$22,000 00	
Caney Fork River.....	20,000 00	
Clinch River.....	26,000 00	
Duck River.....	13,000 00	
French Broad River.....	14,500 00	
Hiwassee River.....	34,000 00	
Obed River.....	6,500 00	
Obeys River.....	5,000 00	
Red River.....	5,000 00	
South Fork Deer River .....	10,000 00	\$156,000 00

**VIRGINIA.—**

Accotink Creek .....	5,000 00	
Appomattox River.....	428,750 00	
Archers' Hope River.....	10,000 00	
Aquia Creek.....	10,500 00	
Black Water River.....	14,000 00	
Chickahominy River .....	19,000 00	
Dan River.....	22,500 00	
Elizabeth River.....	40,080 00	
Hampton River.....	12,000 00	
James River.....	923,000 00	
Mattaponi River.....	13,300 00	
Nansemond River .....	37,000 00	
Neabsco Creek.....	5,000 00	
Nomoni Creek.....	32,500 00	
Nottoway River.....	7,000 00	
New River.....	10,000 00	
Occoquan River.....	25,000 00	
Pagan Creek.....	10,000 00	
Pamunkey River.....	12,500 00	
Potomac River.....	8,500 00	
Rappahannock River .....	190,500 00	
Staunton River.....	39,500 00	
Totusky River.....	10,000 00	
Urbanna Creek .....	15,500 00	
York River.....	78,750 00	1,979,880 00

**WEST VIRGINIA.—**

Buckhannon River .....	3,000 00	
Elk River .....	19,500 00	
Great Kanawha River.....	1,979,500 00	
Guyandotte River .....	12,500 00	
Little Kanawha River.....	146,175 00	
Shenandoah River.....	17,500 00	2,178,175 00

UNITED STATES GOVERNMENT APPROPRIATIONS TO WATER-WAYS.  
CONTINUED.

MISCELLANEOUS.—		APPROPRIATIONS.
Chattahoochee and Flint rivers (Ala., Fla., and Ga.).....	225,000 00	
Choctawhatchee River (Ala. and Fla.).....	102,000 00	
Coosa River (Ala. and Ga.).....	455,000 00	
Cumberland River (Ky. and Tenn.).....	803,000 00	
Cumberland Sound (Ga. and Fla.).....	130,000 00	
Dan River (Va. and Nor. Carl.).....	18,000 00	
Entrance to the Dismal Swamps (Nor. Car. and Va.).....	35,000 00	
Escambia River (Ala. and Fla.).....	23,500 00	
French Broad River (Tenn. and Nor. Carl.)...	51,500 00	
Louisville and Portland Canal, purchase and management of.....	1,250,000 00	
Mississippi River (below Cairo).....	20,194,188 53	
Monongahela River (Penn. and W. Va.).....	307,000 00	
New River (Va. and W. Va.).....	\$102,000 00	
North Landing River.....	47,500 00	
Ohio and Louisville Canal, Falls of the.....	1,741,562 91	
St. Johns and St. Marys rivers (Fla. and Ga.)	78,000 00	
Tennessee River (Ky., Tenn., and Ala.).....	3,188,456 94	
Waccamaw River (Nor. Carl. and So. Carl.)..	25,000 00	
Warrior and Tombigbee rivers (Ala. and Miss.)	197,000 00	\$28,923,708 38
<b>HARBORS.—</b>		
Appalachicola, Fla.....	47,000 00	
Beaufort, S. C.....	100,000 00	
Brunswick, Ga.....	102,500 00	
Cedar Keys, Fla.....	94,500 00	
Charleston, S. C.....	1,632,200 00	
Key West, Fla.....	27,500 00	
Mobile, Ala.....	1,406,751 82	
Norfolk, Va.....	622,500 00	
Pensacola, Fla.....	215,000 00	
Savannah, Ga.....	1,182,000 00	
St. Augustine, Fla.....	33,569 80	
Tampa, Fla.....	70,000 00	5,483,521 62
<b>RECAPITULATION of Rivers, Harbors, etc., by States and Location.—</b>		
Alabama.....	\$425,750 00	
Georgia.....	1,023,571 64	
Florida.....	1,081,780 29	
Kentucky.....	1,370,500 00	
Louisiana.....	674,500 00	
Mississippi.....	581,025 00	
North Carolina.....	3,275,208 92	
South Carolina.....	249,050 00	
Tennessee.....	156,000 00	
Virginia.....	1,979,880 00	
West Virginia.....	2,178,175 00	
Total as per States.....	\$12,995,440 85	
Miscellaneous (as per States above).....	28,923,708 38	
Harbors (as per States above).....	5,483,521 62	
Grand total.....	\$47,402,670 85	

## EXHIBIT B.

### FROM DEPOSITION OF J. M. CULP.

Question by Mr. Stahlman: The memorial presented by the river men stated that the river tariffs, which were submitted with the memorial, show that the steamboats never make rates of freight and passage more to intermediate than to terminal points, but generally less. Please state fully what you know as to this, giving rates and distances.

Ans. I have the sworn statement of a resident of Cincinnati that on the 28th day of April, Mossett & Co., Agents of the Southern Transportation Company, of which firm of agents A. J. Mossett is the principal member, stated to him that to wharf landings on the Mississippi River their rates were five cents per hundred pounds higher than to Vicksburg and New Orleans; that to bank landings on the Mississippi River the rates were from ten to fifteen cents per hundred pounds higher than the rates to Vicksburg and New Orleans, and that the through rate on whisky to points between Memphis and New Orleans was from one dollar and fifty cents to two dollars per barrel, according to the landings, and that the through rate to New Orleans was seventy-five cents per barrel. This sworn statement of the affiant further says that he has seen a bill of lading of the Southern Transportation Company's steamboats, "Thomas Sherlock" and "Golden Rule," dated on or after April 20th, at \$2 per barrel on whisky, Cincinnati to Omega Landing, La., and \$1.25 per barrel from Cincinnati to Bayou Sara, La. I ask leave to file an exhibit, marked "A," being a printed list of the landings on the Ohio and Mississippi rivers between Cincinnati and New Orleans, which I believe to be correct. This table shows the distance from Cincinnati to Omega Landing to be 1,108½ miles, and to Bayou Sara 1,345½ miles. The distance to Vicksburg is 1,132½ miles, and the distance to New Orleans 1,513 miles. I desire further to say, that on the 28th of April, 1887, Mossett & Co. quoted to a firm in Cincinnati a rate on saw-mill machinery, knocked down and small pieces boxed, 65 cents per 100 pounds Cincinnati to Bayou Sara, and to New Orleans 50 cents per 100 pounds, the distance to Bayou Sara being 1,345½, and to New Orleans 1,513 miles. On the same day Mossett & Co. quoted to a firm in Cincinnati on whisky, Cincinnati to Friars Point, Miss., \$1.50 per barrel, and to Bayou Sara \$1.25 per barrel, and to New Orleans 75 cents per barrel. The distance, Cincinnati to Friars Point, being 832½ miles, and to New Orleans, 1,513 miles, and to Bayou Sara 1,345½ miles. On the same day Mossett & Co. quoted to a Cincinnati firm on roofing and corrugated iron to Friars Point, Miss., 35 cents per 100 pounds; to Meyersville, Miss., 40 cents per 100 pounds, to Grand Gulf, Miss., 40 cents per 190 pounds; to Bayou Sara, 25 cents per 100 pounds, and to New Orleans, 20 cents per 100 pounds, the distance, Cincinnati to Friars Point, being 832½ miles, to Meyersville, 1,064½ miles, to Grand Gulf, 1,171½ miles, to Bayou Sara, 1,345½ miles, to New Orleans, 1,513 miles. The rates of transportation on plaster by the same line from Cincinnati to points named were on the same day as follows:

	Per 100 Pounds.	Distance.
To Friars Point, Miss.....	30 cents.	832½ miles.
To Australia, Miss.....	35 "	884 "
To Arkansas City, Ark.....	25 "	959½ "
To Meyersville, Miss.....	35 "	1,064½ "
To Lake Providence, La .....	30 "	1,074½ "
To Vicksburg, Miss.....	20 "	1,132½ "
To Grand Gulf, Miss .....	40 "	1,171½ "
To Plaquemine, La .....	25 "	1,402 "

The rates from St. Louis to landings on the Mississippi River, including New Orleans were, on April 8th, as follows:

FROM ST. LOUIS TO	Hay	Bacon	White Lead and Paints.	Bar Lead and Shot	Grain and Mill Feed	Bagging and Ties	Sloves and Hollowware
Points between Greenville and Donaldsonville, including Vicksburg, Natches, etc.....	25	20	20	20	20	20	30
New Orleans .....	22½	17½	17½	17½	17½	17½	25

I have the sworn statement of a prominent steamboat man on the Alabama River, with reference to the business of that river, in which he says that "on business offering at Mobile for Montgomery and Selma the rate on dry barrels (meaning barrels of flour, etc.), the rate on which between intermediate landings is forty cents per barrel, would in some cases be as low as fifteen or twenty cents per barrel, and on wet barrels (meaning barrels of whisky, pork, etc.), where the rate between intermediate landings would be sixty cents per barrel, the rate on the same offered at Montgomery or Selma, for Mobile, or *vice versa*, would, under circumstances where the competition is strong, be reduced as much as one half." In other words, the boats, frequently on account of competition, are compelled to haul freight a longer distance for less than they would the same freight a much shorter distance in the same direction.

The testimony of Captain Ryman, of Nashville, shows that it is the custom to charge less for long hauls than short hauls on the Cumberland River.

The following table, which, to the best of my knowledge and belief, gives the exact rates in effect one year ago, shows that on the Ohio, Mississippi, Missouri, and Green and Barren rivers the boats charged more for a long than for a short distance:

#### RATES OF TRANSPORTATION VIA RIVER.

##### OHIO RIVER, VIA CINCINNATI AND LOUISVILLE UNITED STATES MAIL LINE COMPANY.

	Dry Goods.	Oil and Whisky	Potatoes.	Nails.
Cincinnati to Louisville, 181 miles.....	\$0 10	\$0 35	\$0 12½	\$0 04
Cincinnati to Rising Sun, 36½ miles.....	15	40	15	.....

##### VIA MEMPHIS AND CINCINNATI PACKET COMPANY.

	Dry Goods.	Oil and Whisky	Sugar & Coffee.
Cincinnati to Evansville, 315 miles.....	\$0 15	\$0 40	\$0 12½
Cincinnati to Maupport, 175 miles.....	20	50	17½
Cincinnati to Cairo, 500 miles.....	15	40	12½
Cincinnati to Elizabethtown, 409 miles.....	25	60	20

## VIA CINCINNATI AND NEW ORLEANS PACKET COMPANY.

	Meat.	Whisky per bbl.
Cincinnati to New Orleans, 1513 miles.....	\$0 20	\$1 08
Cincinnati to Leota Landing, 1043 miles.....	30	2 00

## LOWER MISSISSIPPI RIVER.

## ANCHOR LINE—ST. LOUIS AND NEW ORLEANS.

	CLASSES.			
	1	2	3	4
Memphis to New Orleans, 775 miles.....	\$0 35	\$0 32	\$0 26	\$0 19
Memphis to Columbia, Ark., 216 miles.....	50	40	35	30

## ARKANSAS RIVER.

## ARKANSAS RIVER PACKET COMPANY.

	CLASSES.								
	1	2	3	4	5	A	B	C	D
Memphis to Pine Bluff, 200 miles..	35	28	25	22	15	18½	11½	8½	12
Memphis to Hopedale, 164 miles...	50	40	35	30	25	40	30	25	20

## GREEN AND BARREN RIVERS.

## GREEN AND BARREN RIVER NAVIGATION COMPANY.

	Fourth Class.
Evansville to Bowling Green, 125 miles.....	17
Evansville to Rochester, Ky., 75 miles .....	25

## MISSOURI RIVER.

## MISSOURI RIVER PACKET COMPANY.

	Fourth Class.
Booneville to Kansas City, 214 miles.....	15
Booneville to Cambridge, Mo., 40 miles.....	25

## UPPER MISSISSIPPI RIVER.

	CLASSES.			
	1	2	3	4
St. Louis to St. Paul, 739 miles.....	30	25	20	15
St. Louis to Cassville, 468 miles.....	35	30	25	18

### EXHIBIT C.

Table showing the number of railway stations, terminal and junction points in the Southern States:

STATE.	Number of Local Points at which Re- lief was not asked.	Number of Termi- nal and Junction Points at which Re- lief was asked.	Number of Termi- nal and Junction Points at which Re- lief was not asked.
Kentucky .....	594	5	21
Tennessee .....	303	4	12
Alabama .....	260	8	16
Georgia .....	270	15	7
Mississippi .....	239	6	5
Louisiana .....	99	1	10
Florida .....	246	6	14
North Carolina .....	139	9	7
South Carolina .....	179	8	6
Virginia .....	375	9	15
	2,704	71	113

# EXHIBIT D.

**STATEMENT of Products of Nine Western and Northwestern States as compared with those of Nine Southern States, showing the Average Yield to the Acre in Pounds, and the Average Value per Acre of each Product, and the Total of all Products for each State with Averages.**

(*Agricultural Report, 1886.*)

STATES.	Products.	Quantity Pro- duced in 1884.	No. Acres in each Crop.	Average Yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
OHIO	Corn . . . . .	4,782,008,000	2,846,664	1,679.8	\$85,011,130	\$12.30
	Wheat . . . . .	2,471,186,000	2,691,986	917.9	80,889,500	11.47
	Rye . . . . .	18,812,000	36,869	496.9	183,120	4.96
	Oats . . . . .	749,408,000	886,400	886.9	6,791,510	8.12
	Barley . . . . .	47,280,000	36,884	1,281.5	600,830	16.28
	Buckwheat . . . . .	5,096,000	11,500	443.1	68,600	6.96
	Potatoes . . . . .	725,400,000	161,199	4,500.2	5,077,800	31.50
	Tobacco . . . . .	29,849,000	161,199	815.6	2,113,128	56.73
	Hay . . . . .	6,370,000,000	35,983	2,600.0	31,850,000	13.00
	Total . . . . .	15,198,013,000	2,450,000	1,668.7	112,585,638	12.36
MICHIGAN	Corn . . . . .	1,457,292,000	929,888	1,567.9	10,408,800	11.20
	Wheat . . . . .	1,786,320,000	1,804,385	989.9	22,081,280	12.21
	Rye . . . . .	13,048,000	22,802	572.2	132,810	5.82
	Oats . . . . .	689,680,000	597,864	1,069.9	5,797,100	9.07
	Barley . . . . .	52,848,000	50,847	1,093.1	627,570	12.34
	Buckwheat . . . . .	22,992,000	38,491	684.7	264,600	7.89
	Potatoes . . . . .	791,320,000	146,382	5,399.8	3,296,000	12.50
	Hay . . . . .	3,482,054,000	1,243,591	2,800.0	16,975,013	13.65
	Total . . . . .	8,245,684,000	4,928,940	1,708.1	59,535,173	12.33
INDIANA	Corn . . . . .	5,866,386,000	3,612,312	1,628.9	35,617,380	9.86
	Wheat . . . . .	2,024,700,000	2,708,016	747.6	22,609,150	8.34
	Rye . . . . .	14,386,000	23,511	561.9	136,240	5.42
	Oats . . . . .	686,744,000	724,736	939.9	5,570,240	8.10
	Barley . . . . .	21,264,000	20,580	1,085.7	225,510	12.80
	Buckwheat . . . . .	4,160,000	8,566	485.6	53,600	6.26
	Potatoes . . . . .	420,900,000	92,805	4,559.8	2,455,250	26.60
	Tobacco . . . . .	9,318,000	12,812	727.2	624,306	48.73
	Hay . . . . .	4,082,000,000	1,440,000	2,800.0	14,716,800	10.22
	Total . . . . .	13,088,755,000	8,644,788	1,514.0	89,337,576	9.52



# STATEMENT OF PRODUCTS OF NINE WESTERN AND NORTHWESTERN STATES.—CONTINUED.

STATES.	Products.	Quantity Pro- duced in 1884.	No. Acres in each Crop.	Average Yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
ILLINOIS	Corn . . . . .	13,694,464,000	8,151,463	1,680.0	75,808,640	89.30
	Wheat . . . . .	1,942,440,000	2,790,900	695.9	20,395,620	7.31
	Rye . . . . .	302,129,000	302,129	907.4	2,801,120	7.62
	Oats . . . . .	3,140,896,000	2,990,983	1,050.1	22,576,190	7.55
	Barley . . . . .	47,136,000	41,779	1,128.2	500,820	11.99
	Buckwheat . . . . .	7,696,000	15,338	501.7	99,160	6.47
	Potatoes . . . . .	641,940,000	135,427	4,747.5	3,637,660	26.86
	Tobacco . . . . .	3,944,000	5,736	687.5	276,080	48.13
	Hay . . . . .	8,050,000	2,875,000	2,800.0	25,116,000	8.73
	Total . . . . .	19,760,742,000	17,308,755	1,141.6	150,710,290	8.71
MINNESOTA	Corn . . . . .	1,323,280,000	705,340	1,876.0	7,797,900	11.06
	Wheat . . . . .	2,478,420,000	2,753,816	809.9	20,653,500	7.50
	Rye . . . . .	26,656,000	32,069	831.2	185,640	5.79
	Oats . . . . .	1,155,200,000	1,025,136	1,126.8	7,229,000	7.04
	Barley . . . . .	388,176,000	334,183	1,101.7	2,880,450	8.47
	Buckwheat . . . . .	3,536,000	6,349	556.9	37,400	5.89
	Potatoes . . . . .	384,740,000	61,310	5,459.7	1,506,330	24.57
	Hay . . . . .	5,460,000,000	1,950,000	2,791.0	12,093,900	6.20
	Total . . . . .	11,170,008,000	6,868,203	1,626.3	52,325,120	7.62
IOWA	Corn . . . . .	14,145,600,000	7,329,652	1,929.9	58,098,000	7.93
	Wheat . . . . .	1,876,200,000	2,605,771	720.0	17,198,500	6.60
	Rye . . . . .	80,304,000	123,747	648.9	544,920	4.43
	Oats . . . . .	2,516,800,000	2,145,959	1,172.8	15,730,000	7.33
	Barley . . . . .	237,648,000	221,999	1,070.4	1,732,850	7.81
	Buckwheat . . . . .	10,920,000	20,077	543.9	119,700	5.95
	Potatoes . . . . .	751,080,000	137,563	5,452.6	3,505,040	25.48
	Hay . . . . .	10,125,000,000	8,750,000	2,700.0	21,282,500	5.67
	Total . . . . .	29,743,552,000	16,394,708	1,820.8	118,191,510	7.24

STATEMENT OF PRODUCTS OF NINE WESTERN AND NORTHWESTERN STATES.—CONTINUED.

STATES.	Products.	Quantity produced in 1894.	No. Acres in each Crop.	Average Yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
MISSOURI	Corn . . . . .	11,079,600,000	5,995,981	1,847.8	51,441,000	\$8 57
	Wheat . . . . .	1,650,000,000	2,394,766	706.7	17,050,000	7 30
	Rye . . . . .	32,928,000	50,954	657.8	294,000	5 87
	Oats . . . . .	984,768,000	1,152,590	854.4	7,693,500	6 68
	Barley . . . . .	8,544,000	8,242	1,036.6	106,800	12 96
	Buckwheat . . . . .	3,640,000	6,014	605.2	42,000	6 98
	Potatoes . . . . .	399,180,000	78,275	5,099.7	2,195,490	28 05
	Tobacco . . . . .	15,810,000	18,170	977.7	1,201,560	74 31
	Hay . . . . .	8,250,000,000	1,250,000	2,606.0	10,237,500	8 19
	Total . . . . .	17,424,470,000	10,892,042	1,599.7	90,261,850	8 29
KANSAS	Corn . . . . .	9,436,000,000	4,565,000	2,067.0	37,070,000	8 12
	Wheat . . . . .	2,099,400,000	2,120,500	990.0	15,745,500	7 43
	Rye . . . . .	282,352,000	293,515	951.9	1,764,700	6 01
	Oats . . . . .	877,408,000	783,418	1,113.9	6,063,180	7 70
	Barley . . . . .	26,688,000	21,613	1,294.8	183,480	8 49
	Buckwheat . . . . .	1,082,000	1,799	607.0	13,230	7 85
	Potatoes . . . . .	444,120,000	85,085	5,219.7	3,330,900	39 14
	Hay . . . . .	9,880,000,000	3,800,000	2,600.0	20,896,200	5 50
	Total . . . . .	23,047,060,000	11,670,925	1,974.7	85,086,190	7 29
WISCONSIN	Corn . . . . .	1,467,200,000	1,066,685	1,375.4	8,908,000	8 35
	Wheat . . . . .	1,204,980,000	1,434,510	812.1	12,049,800	8 40
	Rye . . . . .	138,208,000	174,418	792.4	1,110,600	6 37
	Oats . . . . .	1,470,080,000	1,371,334	1,072.0	11,025,600	8 04
	Barley . . . . .	350,352,000	314,610	1,113.6	3,430,530	10 90
	Buckwheat . . . . .	16,744,000	38,032	464.6	164,220	4 56
	Potatoes . . . . .	588,540,000	108,985	5,400.1	2,590,340	23 40
	Tobacco . . . . .	14,360,000	14,663	979.3	1,464,720	99 89
	Hay . . . . .	4,246,838,000	1,633,034	2,599.9	13,162,253	8 06
	Total . . . . .	9,496,352,000	6,154,271	1,543.0	53,866,063	8 75
Grand Total . . . . .		147,174,589,000	91,810,137	1,608.0	804,849,410	8 77

STATEMENT OF PRODUCTS OF NINE WESTERN AND NORTHWESTERN STATES.—CONTINUED.

STATES.	Products.	Quantity produced in 1884.	No. Acres in each Crop.	Average yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
VIRGINIA	Corn . . . . .	1,650,880,000	1,938,391	851.6	16,508,800	\$8.52
	Wheat . . . . .	447,300,000	980,200	480.8	5,964,000	6.41
	Rye . . . . .	18,368,000	51,845	354.2	219,760	4.24
	Oats . . . . .	205,376,000	621,290	339.5	2,695,560	4.84
	Barley . . . . .	816,900	1,163	701.6	11,900	10.23
	Buckwheat . . . . .	10,660,000	16,587	642.6	148,500	8.65
	Potatoes . . . . .	123,660,000	31,350	3,600.0	1,133,550	33.00
	Tobacco . . . . .	99,763,000	149,495	667.3	7,382,462	49.38
	Hay . . . . .	732,778,000	281,838	2,600.0	4,396,668	15.60
	Cotton . . . . .	6,750,000	46,302	145.7	593,852	12.83
	Total . . . . .	3,296,351,000	4,071,401	809.6	39,050,052	9.59
NORTH CAROLINA	Corn . . . . .	1,768,944,000	2,519,927	699.9	18,899,470	7.50
	Wheat . . . . .	279,000,000	767,280	363.6	4,138,500	5.39
	Rye . . . . .	20,552,000	65,551	313.5	293,600	4.49
	Oats . . . . .	147,904,000	617,646	239.4	2,126,120	3.44
	Barley . . . . .	144,000	268	537.3	2,850	10.63
	Buckwheat . . . . .	2,548,000	5,596	455.3	34,800	6.13
	Potatoes . . . . .	75,600,000	19,997	3,780.5	693,000	34.65
	Tobacco . . . . .	34,858,000	69,600	500.8	4,008,670	57.60
	Hay . . . . .	211,676,000	81,414	2,600.0	1,121,883	13.78
	Cotton . . . . .	202,050,000	1,061,048	190.4	17,663,211	16.65
	Total . . . . .	2,738,276,000	5,208,337	525.7	48,981,534	9.40
SOUTH CAROLINA	Corn . . . . .	745,920,000	1,444,020	516.5	9,067,600	6.27
	Wheat . . . . .	84,600,000	231,610	365.2	1,480,500	6.89
	Rye . . . . .	1,792,000	8,285	216.2	32,000	3.86
	Oats . . . . .	113,440,000	394,250	287.7	1,772,500	4.49
	Barley . . . . .	864,000	1,212	712.8	18,000	14.85
	Potatoes . . . . .	13,440,000	3,725	3,608.0	179,200	36.08
	Hay . . . . .	7,476,000	2,990	2,500.3	47,473	15.88
	Cotton . . . . .	255,900,000	1,716,128	149.0	22,227,986	12.95
	Total . . . . .	1,223,432,000	3,802,220	321.7	34,815,259	9.15

# STATEMENT OF PRODUCTS OF NINE WESTERN AND NORTHWESTERN STATES.—CONTINUED.

STATES.	Products.	Quantity pro- duced in 1884.	No. Acres in each Crop.	Average Yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
<b>GEORGIA.</b>	Corn . . . . .	1,731,800,000	2,857,700	606.0	21,647,500	\$7 58
	Wheat . . . . .	187,800,000	487,500	385.2	3,286,500	6 74
	Rye . . . . .	8,120,000	27,085	299.7	174,000	6 42
	Oats . . . . .	200,640,000	702,614	285.5	3,573,900	5 09
	Barley . . . . .	1,056,000	1,666	633.8	23,100	13 86
	Potatoes . . . . .	36,900,000	9,175	4,021.7	639,600	69 71
	Hay . . . . .	39,336,000	16,129	2,600.0	261,684	17 29
	Cotton . . . . .	408,700,000	2,959,980	136.4	35,141,278	11 87
	Total . . . . .	2,609,352,000	7,059,799	369.4	64,747,462	9 17
<b>FLORIDA.</b>	Corn . . . . .	214,872,000	408,918	531.9	3,089,600	7 60
	Oats . . . . .	15,808,000	52,560	300.7	286,400	5 64
	Potatoes . . . . .	10,800,000	1,998	5,405.4	138,000	99 10
	Hay . . . . .	548,000	211	2,597.1	5,206	24 67
	Cotton . . . . .	28,650,000	268,111	106.8	3,151,500	11 75
	Total . . . . .	270,678,000	726,798	372.4	6,720,706	9 25
<b>ALABAMA.</b>	Corn . . . . .	1,691,032,000	2,322,885	727.9	18,420,170	7 93
	Wheat . . . . .	100,500,000	278,450	360.9	1,675,000	6 02
	Rye . . . . .	1,848,000	6,059	305.0	41,250	6 81
	Oats . . . . .	160,480,000	405,830	395.4	2,798,250	6 80
	Barley . . . . .	336,000	649	517.7	7,700	11 86
	Potatoes . . . . .	38,160,000	9,081	4,202.1	696,000	70 04
	Hay . . . . .	26,116,000	10,882	2,400.0	174,977	15 08
	Cotton . . . . .	324,360,000	2,740,941	118.3	29,862,905	10 90
	Total . . . . .	2,342,822,000	5,774,777	405.7	53,576,252	9 28

# STATEMENT OF PRODUCTS OF NINE WESTERN AND NORTHWESTERN STATES.—CONTINUED.

STATES.	Products.	Quantity produced in 1884.	No. Acres in each Crop.	Average yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
MISSISSIPPI	Corn	1,428,560,000	1,889,600	756.0	15,816,200	88 37
	Wheat	14,280,000	48,060	297.1	238,000	4 95
	Rye	280,000	840	333.3	6,000	7 14
	Oats	97,536,000	348,040	280.2	1,737,360	4 99
	Potatoes	33,880,000	8,305	4,320.2	520,260	62 65
	Hay	23,026,000	9,625	2,600.1	154,536	16 66
	Cotton	441,600,000	2,392,447	184.5	39,426,048	16 47
	Total	2,043,162,000	4,696,917	435.0	57,898,404	12 33
	Corn	3,680,488,000	3,245,082	1,134.1	29,575,350	9 11
	Wheat	539,200,000	1,336,230	413.5	6,990,000	5 22
TENNESSEE	Rye	11,700,000	36,137	323.8	146,800	4 95
	Oats	245,760,000	568,895	431.9	3,225,600	5 67
	Barley	2,248,000	3,081	729.6	33,120	10 75
	Buckwheat	1,716,000	5,303	323.6	22,440	4 23
	Potatoes	143,400,000	38,551	3,719.7	1,195,000	31 40
	Tobacco	31,392,000	45,048	686.8	2,197,440	48 78
	Hay	434,632,000	181,957	2,400.0	2,607,792	14 40
	Cotton	156,900,000	815,678	192.3	14,153,949	17 35
	Total	5,257,440,000	6,275,102	839.4	60,146,991	9 59
	Corn	4,025,280,000	3,258,410	1,235.3	30,908,400	9 48
KENTUCKY	Wheat	805,500,000	1,272,000	633.2	9,334,500	7 81
	Rye	47,576,000	96,234	492.3	507,600	5 27
	Oats	251,680,000	427,430	588.8	2,752,750	6 44
	Barley	22,032,000	20,594	1,060.9	275,400	13 37
	Buckwheat	624,000	1,225	509.3	8,400	6 85
	Potatoes	223,680,000	51,067	4,380.1	1,491,200	29 20
	Tobacco	208,692,000	276,139	755.7	15,651,900	56 68
	Hay	702,000,000	270,000	2,600.0	3,422,250	12 68
	Total	6,286,864,000	5,673,099	1,108.1	64,950,400	11 45
	Grand Total	26,078,377,000	43,288,445	602.4	430,887,060	9 95

# EXHIBIT E.

STATEMENT of Corn, Wheat, and Oats, in Pounds, Produced in Nine Western and Northwestern States, Showing the Average number of Pounds, and of Value per Acre of each Product, as compared with Cotton and Tobacco produced in Nine Southern States.

*Agricultural Report, 1885.*

STATES.	Products.	Quantity Produced in 1884.	No. Acres in Each Crop.	Average Yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
OHIO	Corn.	4,782,008,000	2,846,664	1,679.8	\$33,011,130	\$12.30
	Wheat.	2,471,160,000	2,691,986	917.9	30,989,500	11.47
	Oats.	749,408,000	886,400	895.9	6,791,510	8.12
	Total.	8,002,576,000	6,375,000	1,255.3	72,692,140	11.40
MICHIGAN	Corn.	1,457,232,000	929,688	1,567.9	10,408,800	11.20
	Wheat.	1,786,320,000	1,804,365	989.9	22,031,284	12.21
	Oats.	639,680,000	597,864	1,069.9	6,797,100	9.07
	Total.	3,883,232,000	3,331,617	1,165.6	38,237,180	11.48
INDIANA	Corn.	5,866,336,000	3,612,312	1,623.9	35,617,380	9.86
	Wheat.	2,024,700,000	2,708,016	747.6	22,609,150	8.34
	Oats.	655,744,000	724,736	959.9	5,870,340	8.10
	Total.	8,546,780,000	7,045,064	1,210.9	64,096,870	9.10
ILLINOIS	Corn.	13,694,464,000	8,151,468	1,680.0	75,808,640	9.80
	Wheat.	1,942,440,000	2,790,900	695.9	20,895,620	7.31
	Oats.	3,140,996,000	2,990,968	1,050.1	22,575,190	7.55
	Total.	18,777,900,000	13,933,346	1,347.7	118,779,450	8.52
WISCONSIN	Corn.	1,467,200,000	1,066,685	1,375.4	8,908,000	8.35
	Wheat.	1,204,980,000	1,434,510	812.1	12,049,800	8.40
	Oats.	1,470,080,000	1,371,334	1,072.0	11,025,600	8.04
	Total.	4,142,260,000	3,872,529	1,060.9	31,983,406	9.26
MINNESOTA	Corn.	1,923,280,000	705,340	1,376.0	7,797,900	11.06
	Wheat.	2,478,420,000	2,753,816	809.9	20,653,500	7.50
	Oats.	1,155,200,000	1,025,136	1,126.8	7,220,000	7.04
	Total.	4,956,900,000	4,484,292	1,105.4	35,671,400	7.96

**STATEMENT OF CORN, WHEAT, AND OATS PRODUCTS OF NINE WESTERN AND NORTHWESTERN STATES.—CONTINUED.**

States.	Products.	Quantity Pro- duced in 1884.	No. Acres in Each Crop.	A'ge Yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
<b>IOWA.</b>	Corn . . . . .	14,145,600,000	7,329,652	1,929.9	58,098,000	\$7.92
	Wheat . . . . .	1,876,200,000	2,695,771	720.0	17,198,500	6.60
	Oats . . . . .	2,546,800,000	2,145,959	1,172.8	15,730,000	7.32
	Total . . . . .	18,538,600,000	12,081,382	1,534.5	91,026,500	7.53
<b>MISSOURI.</b>	Corn . . . . .	11,079,600,000	5,985,931	1,847.8	51,441,000	8.57
	Wheat . . . . .	1,650,000,000	2,334,766	706.7	17,050,000	7.30
	Oats . . . . .	984,768,000	1,152,590	854.4	7,693,500	6.68
	Total . . . . .	13,714,368,000	9,483,287	1,446.1	76,134,500	8.03
<b>KANSAS.</b>	Corn . . . . .	9,436,000,000	4,565,000	2,067.0	37,070,000	8.12
	Wheat . . . . .	2,099,400,000	2,120,500	990.0	15,745,500	7.43
	Oats . . . . .	877,408,000	783,413	1,119.9	6,032,180	7.70
	Total . . . . .	12,412,808,000	7,468,913	1,661.9	58,847,680	7.88
	Grand total. . . . .	93,015,324,000	68,075,430	1,366.4	\$587,519,120	\$8.63
<b>VIRGINIA.</b>	Cotton . . . . .	6,750,000	46,302	145.7	\$593,852	\$12.83
	Tobacco . . . . .	99,763,000	149,495	667.3	7,382,462	49.38
	Total . . . . .	106,513,000	195,797	543.1	7,976,314	40.74
	Cotton . . . . .	202,050,000	1,061,048	190.4	17,663,211	16.65
<b>NORTH CAROLINA.</b>	Tobacco . . . . .	34,858,000	69,600	500.8	4,008,670	57.60
	Total . . . . .	236,908,000	1,130,648	209.4	21,671,881	19.17
	Cotton . . . . .	255,900,000	1,716,128	149.0	22,227,986	12.95
	Tobacco . . . . .					
<b>SOUTH CAROLINA.</b>	Total . . . . .	255,900,000	1,716,128	149.0	22,227,986	12.95

**STATEMENT OF CORN, WHEAT, AND OATS PRODUCED IN NINE WESTERN AND NORTHWESTERN STATES.—CONTINUED.**

STATES.	Products.	Quantities Pro- duced in 1884.	Number Acres in each Crop.	Average yield per Acre, in lbs.	Total Value of Product.	Average Value of Crop per Acre.
<b>GEORGIA</b> . . . . .	Cotton . . . . .	403,700,000	2,958,930	136.4	35,141,278	\$11 87
	Tobacco . . . . .					
	Total . . . . .	403,700,000	2,958,930	136.4	35,141,278	11 87
<b>FLORIDA</b> . . . . .	Cotton . . . . .	28,650,000	268,111	106.8	3,151,500	11 75
	Tobacco . . . . .					
	Total . . . . .	28,650,000	268,111	106.8	3,151,500	11 75
<b>ALABAMA</b> . . . . .	Cotton . . . . .	324,350,000	2,740,941	118.3	29,862,905	10 90
	Tobacco . . . . .					
	Total . . . . .	324,350,000	2,740,941	118.3	29,862,905	10 90
<b>MISSISSIPPI</b> . . . . .	Cotton . . . . .	441,600,000	2,392,447	184.5	39,426,048	16 47
	Tobacco . . . . .					
	Total . . . . .	441,600,000	2,392,447	184.5	39,426,048	16 47
<b>TENNESSEE</b> . . . . .	Cotton . . . . .	156,900,000	815,678	192.3	14,153,949	17 35
	Tobacco . . . . .	31,302,000	45,048	696.8	2,197,440	48 78
	Total . . . . .	188,292,000	860,726	218.8	16,351,389	19 00
<b>KENTUCKY</b> . . . . .	Cotton . . . . .	208,692,000	276,139	815.6	15,651,900	58 73
	Tobacco . . . . .					
	Total . . . . .	208,692,000	276,139	815.6	15,651,900	58 73
	Grand Total . . . . .	2,194,605,000	12,639,867	175.0	\$191,461,201	\$15 27



# EXHIBIT F.

## COMPARATIVE STATEMENT of Tonnage and Earnings of Northern and Southern Railroads. Poor's Manual, 1885.

RAILROADS.	FREIGHT.			PASSENGERS.			GROSS EARNINGS PER MILE.
	Length of Road, Miles.	Tons of Freight Moved.	Average tons per mile of Road.	Length of Road, Miles.	Passengers Carried.	Average Passengers per mile of Road.	
Pennsylvania R R.....	2,250	39,418,385	17,547	2,250	27,642,018	12,285	\$20,034 55
New York, Lake Erie & Western R. R.....	1,602	14,959,970	9,338	1,602	7,209,054	4,500	11,820 14
New York Central & Hudson River R. R.....	953	10,802,957	11,336	953	12,747,801	13,366	23,522 24
Lake Shore & Michigan Southern R. R.....	1,304	8,023,093	5,987	1,340	3,479,274	2,596	10,545 00
Pittsburgh, Fort Wayne & Chicago R. R.....	507	4,711,888	9,294	507	3,225,650	6,362	17,551 16
Pittsburgh, Cincinnati & St. Louis R. R.....	199	4,066,386	20,434	199	1,261,427	6,339	20,077 77
Jeffersonville, Madison & Indianapolis R. R.	225	1 827,055	8,120	225	872,074	3,876	5,951 63
Total.....	7,076	83,872,734	11,853	7,076	56,437,298	7,976	109,502 49
Louisville & Nashville R. R.....	2,076	8,365,521	4,029	2,076	4,328,383	2,085	\$6,747 95
Cincinnati, New Orleans & Texas Pacific R.R.	336	979,421	2,915	336	587,175	1,747	7,980 79
Central R. R. and Bridge Co. of Georgia....	1,146	1,276,280	1,114	1,146	628,126	548	4,624 72
East Tennessee, Virginia & Georgia R. R....	1,104	1,563,382	1,416	1,104	899,341	815	3,662 63
Richmond & Danville R. R.....	854	1,451,646	1,700	854	659,386	772	5,260 91
Norfolk & Western R. R.....	515	1,199,790	2,330	515	388,087	753	5,396 53
Mobile & Ohio R. R.....	527	429,141	814	527	409,391	777	3,986 77
Total.....	6,558	15,265,181	2,327	6,558	7,899,889	1,204	37,660 30
Grand total.....							
Average tons per mile of road north of Ohio River,							83.6 per cent.
Average tons per mile of road south of Ohio River,							16.4 per cent.
Average passengers per mile of road north of Ohio River,						100	86.9 per cent.
Average passengers per mile of road south of Ohio River,						100	13.1 per cent.
Average gross earnings per mile of road north of Ohio River,						100	74.4 per cent.
Average gross earnings per mile of road south of Ohio River,						100	25.6 per cent.



BEFORE THE  
Inter-State Commerce Commission.

---

PETITIONS

—OF THE—

Louisville, New Orleans & Texas Ry. Co.

—AND THE—

Newport News & Mississippi Valley Co.

—AND—

EVIDENCE,

WITH

Argument and Brief

BY

HOLMES CUMMINS.



MEMPHIS.

S. C. TOOF & CO., PRINTERS AND LITHOGRAPHERS.

1887.



*To the Honorable, the Inter-State Commerce Commission  
of the United States of America, sitting at Washington :*

The Louisville, New Orleans & Texas Railway Company, a corporation organized under the laws of the States of Tennessee, Mississippi and Louisiana, and having its situs and principal office and place of business at Memphis, in the State of Tennessee, would respectfully represent and show unto your honorable body as follows :

That your petitioner owns and operates a line of railway from Memphis, in Tennessee, by way of Vicksburg, in Mississippi, and Baton Rouge, in Louisiana, to the city of New Orleans, in the latter State, some four hundred and fifty-six (456) miles in length.

That your petitioner was organized under and by virtue of a consolidation of different corporations of said States of Tennessee, Mississippi and Louisiana, which corporations, formed under the laws of said named States respectively, were authorized by the statutes under which they were so created to construct and operate the portions of said line of road now owned by your petitioner in said several States, and to consolidate the same as has been done into one corporation, to-wit : your petitioner.

That petitioner's said line of railway parallels the Mississippi River, and touches the same at Memphis, Vicksburg, Baton Rouge and New Orleans, and connects also with said river by virtue of the lines of other railroads connecting with your petitioner at Glendale, Greenville, Huntington and Natchez and other points in Mississippi, and at Port Hudson and other points in Louisiana, while at many stations and depots along petitioner's line it is distant from said river many miles and separated therefrom by lagoons, bayous, marshes and swamps that are virtually impassable.

That your petitioner's said line of railway was begun in the year 1882, when said country between Memphis and Vicksburg was an almost impenetrable swamp and unprotected from the waters of the Mississippi River, and the larger portion of said territory through which your petitioner's line runs was through much of the year covered with the overflow waters of said river and of little or no value.

That the projectors of petitioner's said line of railway have besides the investment of large amounts of money in the construction of its said line of road, also expended large sums of money in aid of levees for the protection of said country from said overflow waters of the Mississippi River, and so by such outlays of monies have redeemed said territory from said overflow so as to enable the lands there to become cultivated and be again productive.

That petitioner, by reason of its position along said Mississippi River as aforesaid, is necessarily compelled to compete with the carrier lines on said river, to-wit: Steamboats, barges, flatboats, etc., in the business done between the points where petitioner's said line touches said river or connects therewith, and its said terminal points and other places beyond the same to or from which freights are shipped over the lines of connecting railroads and other common carriers, of which points a list is hereto attached, marked as "Exhibit A" hereto, and made a part hereof, and is in that way forced to or from these points to do business therefor at far less than its regular or schedule rates along its line for the same business, or else to do without such business, and that its tariff or schedule for freight and passenger business at intermediate points is but reasonable, and to do without said business at said river points would be a serious loss and injury to petitioner, and cripple its property and legitimate revenues.

That the cost and expense incident to the carriage of freight at points along petitioner's line other than said

termini and competitive points, is far greater than on the like business at said termini and competitive points, by reason of the fact that cars for the same go or come empty one way and are freighted only in one direction, necessitating a double length haul for a single or half the distance freight is carried, while as to said business between said termini and competitive points by reason of the trade done at said business centres, petitioner's cars are freighted in each direction, and its empty haul is a smaller percentage of the entire haul. ✓

That petitioner, as such railway corporation and common carrier, is required by law to operate its line of road each day, week and month of the year, whether the business offered returns a revenue equal to the cost of the service, to say nothing of a profit on the investment, or no, while petitioner's competitors, to-wit, the several craft on said Mississippi River and its confluent, during the dull season, which in this locality runs through half the year, lie idle or seek other waters where business is remunerative.

That petitioner's line of road was completed and opened to business only in the fall of A. D. 1884, and during the two years it has operated its line of road, it has not been able to earn interest on the actual money cost of the construction and equipment of its road. ✓

That petitioner's assessment for taxation for the cost and maintenance of said levees for the protection of said territory from overflow from the Mississippi River is about one-half the total assessed value of property subject to tax therefor in that part of the State of Mississippi, and to impair petitioner's revenues, as the enforcement of the letter of the statute under which your honorable body is organized, as interpreted by some shippers of freights and certain carriers, subject to said act, would inevitably accomplish, unless, as petitioner is advised such water competition renders the circumstances dissimilar, would result in a probable loss of said levee system, and the devastation by overflow ✓

from said Mississippi River of the four million acres of land known as the Yazoo Delta.

• That about three hundred and twenty five miles of petitioner's total mileage (four hundred and fifty-six miles) lies in the State of Mississippi, where (see Laws of Mississippi, session of A. D. 1884, chap. 23; *Stone v. R. R. Co.*, 62 Miss. 607; *Stone v. R. R. Co.*, 116 U. S. 307, 347 and 352) a commission similar in authority to your honorable body has been in existence and active operation since the opening of petitioner's line of road for business; and said Railroad Commission of the State of Mississippi to whom petitioner has, from time to time, as required by the statute of that State, submitted its tariffs for freight and passenger business, have approved petitioner's charges and rates, and also have authorized your petitioner to so alter and change the same from time to time, and as to its several depots and stations, as will enable petitioner to meet the competition of said Mississippi River and its tributaries.

✓ That it is the daily practice of the steamboat lines and other craft plying the Mississippi River and its tributary streams to charge a lower rate for a long than a short carriage, especially to competitive points, and this competition and freedom from legal restraint thereabout your petitioner meets at many points on its said line of road, and this not alone as to business to or from points on its line of road, but also as to business to and from points beyond either terminus, such as seaboard cities through New Orleans, and points on the Mississippi River and its tributaries north of Memphis, as well as the Arkansas, the Red, the Yazoo and other rivers.

• ✓ Your petitioner is advised that it may lawfully make a lower charge for freight or passage for a longer than for a shorter distance, where such lower charge is necessary to enable petitioner to meet the competition of said carriers by water on said river.



However, if mistaken in this position petitioner is further advised that under the proviso of the fourth section of the act of Congress, under which your honorable body is created, authority may be granted petitioner to charge less for longer than for shorter distances for the transportation of passengers or property upon application to your honorable body therefor.

For that end your petitioner respectfully presents this petition, and prays that the circumstances affecting said freight and passenger business to and from said competitive points be adjudged dissimilar, and to justify petitioner in charging less thereto or therefrom than to or from intermediate points that are free from such competition, and that such authority be granted under the provisions of said statute as to such river points and competition with such river craft, with permission to so alter and change its freight and passenger tariffs, as to said competitive points as herein above set forth and as shown in "Exhibit A" hereto, from time to time as may be necessary for petitioner to meet the river rates, etc.

Your petitioner would further pray that the same relief be granted it, as your honorable body have already granted, or may hereafter grant, the several railroads and other carrier lines composing the Southern Railway and Steamship Association—namely, the Cincinnati, New Orleans and Texas Pacific Railroad Company, the Louisville & Nashville Railroad Company and others, as to interior competitive points, so as to enable petitioner to meet such rates and do business over its connections to or from same.

Petitioner prays for general relief, and as ever bound, etc.

THE LOUISVILLE, NEW ORLEANS AND  
TEXAS RAILWAY CO.

By JAMES M. EDWARDS, *Vice-President.*

HOLMES CUMMINS, *Attorney.*

## EXHIBIT A.

*To Petition of Louisville, New Orleans and Texas Railway Company.*

Memphis,                      'Huntington,                      Greenville.

All points on Leland and Lake Washington Branch.

Vicksburg,	Warrenton,	Natchez,
Yokena,	Glass,	Mattingley,
Port Hickey,	Port Hudson,	Baton Rouge.

New Orleans and Intermediate Points to Baton Rouge.

Bayou Sara,	Baker,	Zachrie,
Slaughter,	Echol,	McVae, .
Lindsay,	Bells.	

To and from New York.

Texas Territory,  
via New Orleans and Vicksburg.

Kansas City,	St. Louis,	Chicago,
Cincinnati,	Louisville,	Little Rock,
Pine Bluff,	Camden,	Shreveport,
Monroe,	Cairo.	.

The privilege to disregard the long and short haul clause on business between points on the line of Louisville, New Orleans & Texas Railway, and the above named points and territory beyond as to said Louisville, New Orleans & Texas Railway Company, and its connections with said points.

UNITED STATES OF AMERICA.  
 WESTERN DISTRICT OF WEST TENNESSEE, }

Personally appeared before me, J. B. Clough, Clerk of the Circuit and District Courts for the Western Division of the Western District of Tennessee and U. S. Commissioner, etc., the above named James M. Edwards, to me personally known as the Vice President and General Manager of the Louisville, New Orleans & Texas Railway Company, and who made oath that the statements in foregoing petition are full and true, according to the best of his knowledge, information and belief.

JAMES M. EDWARDS.

Sworn to and subscribed before me this ----- day of April A. D. 1887.

J. B. CLOUGH.

*U. S. Clerk and Commissioner.*

---

James M. Edwards, being duly sworn, deposes and says : That he is, and from the organization of said corporation has been, the vice-president and general manager of "The Louisville, New Orleans & Texas Railway Company," and has had personal charge and control of the construction, equipment and operation of said company's line of railroad between Memphis and New Orleans from its inception to the present date.

That affiant personally knows that the earnings of said railway are, and ever have been, insufficient to meet or pay the stipulated interest, five per cent. (5%), on the actual money cost of the construction and equipment of said railway.

That heretofore, viz : About the 20th day of August, A. D., 1886, and on divers other days, affiant with other officials and agents of said company, appeared before the railroad commission of the State of Mississippi, and submitted to that commission the schedules, tariffs, classifications, etc., showing the rates and fares charged by said

company, for the carriage of passengers and freights over its railroad in the State of Mississippi.

That said rates and charges were fully considered and ratified and approved by said commission; no minute or record was made by said commission of its action about that matter so far as affiant has any knowledge or information, the members preferring, for reasons of their own, not to do so. They, however, announced in open session to your affiant that they approved said rates and charges, schedules, tariffs and classifications, etc., copies of which are herewith filed as "Exhibits" hereto and made part hereof.

And said railroad commission of the State of Mississippi expressly authorized said company, and affiant, as its general manager, to vary and change said rates and charges at, to and from points where competition with steamboats and other craft on the Mississippi River and its confluent was met so as to secure the business.

JAS. M. EDWARDS.

Subscribed and sworn to before me this \_\_\_\_\_ day of April, A. D. 1887.

J. B. CLOUGH, *Clerk, etc.*

---

W. M. Rhett, being duly sworn, deposes and says: That since the 15th day of September, A. D. 1884, he has been in the employ of the Louisville, New Orleans & Texas Railway Company as chief clerk in the office of the general freight agent of that company. That he has read and understands the foregoing affidavit of James M. Edwards; that affiant was present with said Edwards before the railroad commission of Mississippi about the 20th day of August, A. D. 1886, when said schedules, tariffs and classifications and the rates and charges for freight and passage on said company's railroad were considered, and affiant knows that that same were ratified and approved by said commission,

as above set forth in the affidavit of said James M. Edwards, and that permission was granted said company by said commission, to alter and reduce its rates and charges at, to and from points where said company touched or connected with the Mississippi River or its confluents, as to enable said company to meet such competition and secure the business for said railway.

This was all done in affiant's presence and hearing.

W. M. RHETT.

Sworn to and subscribed before me this ..... day of April, A. D. 1887.

J. B. CLOUGH, *Clerk, etc.*

*To the Honorable, the Inter-State Commerce Commission  
of the United States of America, sitting at Washington :*

The Newport News and Mississippi Valley Company would respectfully represent and show unto your Honorable body as follows :

That said Newport News and Mississippi Valley Company, your petitioners, as lessees of the Chesapeake, Ohio and Southwestern Railroad, is in possession of and is operating a line of railroad extending from the city of Louisville, in Kentucky, by the way of Paducah in that State, to the city of Memphis, in Tennessee, three hundred and ninety-two miles in length.

That petitioner's said railroad from Louisville, on the Ohio river, to Memphis, on the Mississippi river, is in competition with steamboats, barges and flatboats, etc., plying said rivers, as to all business between petitioner's said terminal points, as well as many intermediate stations, such as West Point, Paducah, etc., on the Ohio river; Eddyville, Kuttawa, etc., on the Cumberland; Dyersburg, on the Forked Deer river; Rialto, on the Big Hatchie river, etc., etc.; petitioner's said railroad running parallel to said Ohio and Mississippi rivers its entire length, and crossing said Cumberland, Forked Deer and Big Hatchie rivers

That it is the rule with steamboats, barges and other crafts in the carrying trade on said rivers to charge a lower rate of freight on matters to and from said points where petitioner's said railroad touches said rivers than on like matter carried a shorter distance to intermediate points, as well as from the same where not in competition with petitioner's said railroad, and to enable petitioner to secure any business at such competitive points, it is required to lower its rate of charges to meet that made by said carriers by water.

That your petitioner's tariff of charges for freight and passage are reasonable, or rather it should say, are low, as to intermediate or non-competitive points; in fact, its rates are so low, as that its earnings have not been sufficient to pay its operating expenses, construction account, and fixed charges; and it has incurred a floating debt above and beyond its funded or mortgage debt because of its revenues from operating said road being insufficient.

That in the State of Kentucky, where about three-fourths of petitioner's said line of railway lies, by an act of the Legislature of that State, approved the 6th of April, 1882, and entitled: "An Act to Prevent Extortion and Discrimination in the Transportation of Freight and Passengers by Railroad Corporations, and in aid of that purpose to establish a Board of Railroad Commissioners, and define its powers and duties,"—guards and restrictions similar in most of their terms to those of the statute under which your honorable body was organized—have been, and are in force.

That also, in the State of Tennessee, the Legislature by act approved the 30th day of March, 1883, entitled: "An Act to Provide for the Regulation of Railroad Companies, and Persons Operating Railroads in this State; to prevent discrimination upon railroads," etc., etc., imposed similar terms and restrictions on the business of said railway line.

That, as required by said statutes of Kentucky and Tennessee, the rates of fare for passengers, and the tariff for freights from time to time adopted and in force on said line of railroad, have been regularly filed with the Commissioners created under said acts; and, although said statute of Tennessee was repealed in A. D. 1885, and the Commission created thereunder abolished, yet the rate and charges for freight and passage on said railroad during the existence of said Commission have substantially remained the same since that time; and when changes have been made, in almost every instance, they have been to a lower rate.

That neither of said State Commissions, have, at any time, requested or required petitioner's said schedules and tariffs to be changed or lowered, nor have they, or either of them, at any time objected to the rates made by your petitioner or its lessor to said water competitive points, nor have they, or either of them, considered that such rates made any unjust discrimination as against other persons or places.

That your petitioner, as such common carrier, is required by law to operate its said railway each day the year through, whether the business done, or offered to be done, yields a sufficient return to pay the cost of the service,—to say nothing of a profit on the investment,—while the steamboat lines, and other carriers by water routes, are allowed by law to withdraw during the dull season, and to save at least the cost of running at a loss; or, as said water craft often do, they change their route over other waters, where business is found that yields them a profit.

That the cost and expense incident to the carriage of freights to and from points on petitioner's said railroad, other than said termini and competitive points, is far greater than that of like business to and from said termini and competitive points, because of the fact that cars for the former go or come in almost every instance, empty one way and are freighted only in one direction, so necessitating for all such business a double distance haul for half the distance freight is carried; while as to the business to and from said termini and competitive points, by reason of the larger and diversified trade, manufacture, etc., done at such business centers, your petitioner is enabled to freight its cars in each direction, and its empty haul, as to such business, is far less than for the business at way stations. Besides above, by reason of abundance and competition in labor and other facilities therefor, the expenses of loading and unloading cars at said terminal and competitive points is less than at intermediate or way stations. And for these reasons, the cost of the service



being less, your petitioner is enabled to do the business at said terminal and competitive points, even at lower rates than at said intermediate or way stations.

That in order to secure any part of the business at said terminal and competitive points, your petitioner is required by necessity to meet the rates made by said carriers by water; while to lower its rates as to all other points on its line so as to conform thereto, and comply with the provisions of the first clause of the fourth section of the Act of Congress under which your honorable body is organized, would bankrupt your petitioner; and at the same time to require your petitioner to adjust its rates as to said terminal and competitive points up with those at its said other stations will lose your petitioner the business of said points, which will inevitably take the cheaper route by river, etc., and so seriously cripple your petitioner and deprive it of its legitimate business and revenue, and entail upon it serious loss.

Your petitioner is advised that it may lawfully make a lower charge for freight or passage for a longer than for a shorter distance where such charge is necessary to enable petitioner to meet the competition of said carriers by water on said rivers. Which construction of the law your petitioner is advised your honorable body have adopted, and petitioner is desirous of obtaining your ruling in that regard as concerns its said railway, for the reason that the circumstances and conditions are not substantially similar when such competition is met as when the same does not exist.

However, if mistaken in this position, your petitioner is further advised that under the proviso of the fourth section of said Act of Congress under which your honorable body is organized, authority may be granted your petitioner to charge less for longer distances than for shorter distances for the transportation of passengers or property upon application to your honorable body therefor.

Your petitioner would further show unto your honorable body, that the Louisville and Nashville Railroad Company, the Nashville, Chattanooga and St. Louis Railway Company, and the New Orleans and Texas Pacific Railway Company, and other railway lines, members of the Southern Railway and Steamship Association, are competitors of petitioner for business at Louisville and points North and East thereof, at Evansville, Henderson, Chicago and other points in Ohio, Indiana, Illinois and Northwestern points based on Chicago, St. Louis and other points reached through that city, as well as Mississippi, Louisiana, Arkansas, Texas and the Pacific Coast points and intermediate territory, and points in the Southeastern Gulf States, etc.

That your petitioner had on the ---- day of April, inst., readjusted its rates and charges in conformity with the act of Congress known as the Inter-State Commerce Act, copies of all of which rates and charges, as well as of its tariffs in force previous thereto, are herewith filed as "Exhibits" to this petition.

That however, since the order of your honorable body of date about the 6th of April instant, suspending for ninety days requirements of said act of Congress as to said Louisville and Nashville Railroad Company and other lines composing the Southern Railway and Steamship Association, those lines have so reduced their rates and charges, amounting, in some instances, to fifty per cent., to many of said competitive points, as to shut out your petitioner from all participation in the business; said lines of said Southern Railway and Steamship Association being thus relieved from the requirements of the law as to the long and short haul, while your petitioner, having no such relief from your honorable body, is endeavoring to comply with said statute, and it has for several days been unable to secure any of such competitive business, shippers naturally preferring the cheaper route and sending their freight by said Louisville and Nashville Railroad and associated lines, to the great loss and injury of your petitioner; while again,

shippers at intermediate points on your petitioner's line, are paying it full rates, as per said schedules and tariffs herewith filed, and other shippers on said rival lines are securing far lower rates, to the great loss and damage of those on petitioner's line.

In consideration of these premises, your petitioner prays that under the proviso to the said fourth section of the act of Congress under which your honorable body is organized, authority be granted your petitioner to charge less for longer than for shorter distances for the transportation of freight and passengers to and from its said terminal and competitive points, so as to enable your petitioner to meet the competition of said carriers by water at those places; with authority to so alter and change the said rates from time to time as may be necessary.

Your petitioner further prays to be allowed to make the same rates, to and from interior and other competitive points, as your honorable body have already allowed said L. & N. R. R. Co. and associate lines to do, so as to enable petitioner to do business to and from said points over its connections, etc. And for general relief and as ever bound, etc.

THE NEWPORT NEWS & MISSISSIPPI  
VALLEY COMPANY.

By C. P. HUNTINGTON, *President*.

HOLMES CUMMINS, *Attorney*.

UNITED STATES OF AMERICA, }  
Commonwealth of Ky., }  
COUNTY OF JEFFERSON. }

Personally appeared before me, C. F. Krebs, a Notary Public in and for said county of Jefferson, and State of Ky., the said C. P. Huntington, to me personally known, and being duly sworn, deposed and said that the matters set forth above are full and true to the best of his knowledge, information and belief.

[SEAL.]

C. F. KREBS, *Notary Public, etc.*

John Echols, being duly sworn, said : I am sixty years of age, and have been connected with the Chesapeake, Ohio and Southwestern Railroad since its organization in 1881, as its vice-president.

This line of road running from Memphis, in Tennessee, to Louisville, Kentucky, was leased to the Newport News and Mississippi Valley Company in the early part of the year 1886, and since that time has been operated by the N. N. & M. V. Co.

My position in the latter company is virtually the same regarding the management and operation of said railroad as it was prior to the lease.

In this way I have had charge of said line of railroad and the management of its business since it was opened in the early part of 1882. My business necessarily has called me over the line of this road and at its various stations, and through adjacent country frequently, and I might say that for nearly six years past I have virtually lived along the line of road, and in this way have become pretty thoroughly acquainted with the country between Louisville and Memphis, and know what it is and what the people living through that country need or can furnish in the way of transportation matter to a railway line running through their midst. I file herewith and make the same a part of my deposition as an exhibit hereto, a copy of the annual report of the president and directors of said C. O. & S. W. R. R. Co. as to the business done on said line of road during the year 1886, which shows pretty fully what we have done, and how we have done it, as well as the classifications of our business, both as to tonnage and earnings. The facts stated in said report are, I believe, full, and are true.

The road, as operated, extends from Louisville to the city of Memphis, a distance of 392 miles. It runs through a sparsely settled country, and on all its line the agricultural interest is the one which predominates. For most of the distance this agricultural interest has not heretofore

been a very prosperous one; it has required a great deal of care to foster and encourage the same and also induce its further development. In addition to the agricultural interests there are a number of coal mines, distant from 112 to 140 miles from Louisville. This coal, whilst of very good quality, yet is not regarded as of equal quality with the Pittsburg coal, which is its principal competitor at the various points our road touches navigable streams, such as Louisville, West Point, Rockport, Paducah, Dyersburg, Eddyville, Kuttawa and Memphis. The road for a great part of its line traverses a broken country, and consequently has pretty high grades and sharp curves. It crosses the following navigable streams, which are navigated by steamboats, as follows: Salt river, twenty miles west of Louisville; Green river, 117 miles from Louisville; Cumberland river, near Kuttawa; the Tennessee river, near Calvert City; touching the Ohio again at Paducah; the Obion river at Obion station, which is 96 miles from Memphis; the Forked Deer river at Dyersburg, 76 miles from Memphis; the Big Hatchie at Rialto, 42 miles from Memphis; terminating with the Mississippi at Memphis; at all of which points the road of course has to compete with water transportation.

By reference to the annual report, which has been heretofore filed, it will be seen that there was transported of local freight—including coal—during the year 1886, 464,033 tons of freight, on which there was received an average of .01<sup>84</sup> per ton per mile. That during the same time there was transported of through freight 231,539 tons, on which was received .669 per ton per mile, making altogether of freight carried, both local and through, 695,572 tons, upon which was received an average of .01 per ton per mile. It will be seen also that in carrying the 464,033 tons of local freight, only 60,818,410 ton miles were run, whereas in carrying the 231,539 tons of through freight, 63,389,231 ton miles were run. The revenue from local freight was \$818,477.43, the revenue derived from through freight was

\$423,764.73, making together the gross receipts for freight \$1,242,242.16. It will be further seen that the operating expenses of the road were .61<sup>95</sup> per cent. of the gross earnings, leaving a net earning of \$656,525.41, which was \$18,095.17 less than the fixed charges of the road. By operating expenses I mean the actual expenses of running the road and maintaining the track and equipment. and in this is included no interest upon capital cost or dividends upon stock. These latter sums have no fund from which to derive payment excepting out of what we call net earnings, and, as I said above, these net earnings are insufficient to pay our interest account—which we call fixed charges—by the sum of \$18,095.17, leaving nothing for dividends on stock. Our deficit for the year 1886 was smaller than for any previous year this road has been operated, and our funded debt account represents less than the actual money cost of the property of the road.

If the fourth section of the Inter-State Commerce bill is enforced against this road one of two things must be done: Either the rates on through business must be increased, or the rates on local business must be decreased. In my opinion, if the rates on through business are materially increased the business will be lost to the road, because that business then will go by our rivals, the competitors on the water lines I have mentioned, for, naturally, the business will take the cheaper route. This would involve to us the loss certainly of most of the \$423,764.73, which have been derived from this through business; or, if the rates on local business should be reduced, it could not have the effect of increasing materially for a long time to come the volume of this local business, and must therefore operate in a reduction of the earnings from this local business. Either one of these results, it will be seen, would be ruinous to the interests of the road.

I know that the volume of our local business cannot be increased by any inducement of a reduction in the rates thereon so as to compensate for the loss of revenue in the

reduction, because I am thoroughly conversant with the country that is tributary to our road, and from and to which this local business is carried. I have been, as I said above, in this country all my time virtually for many years, and it has been my study to know what the business of the country was, in what it consisted, what it needed to be imported for consumption, what it produced for export, and I know that nothing we could do by way of lowering rates on local freights through that country could so build it up and increase the volume of its local traffic as by any possibility to make up the loss of revenue we would suffer in decreasing our local rates to anything near the basis of our through rates. Besides these matters, the difference between our local and through rates is more apparent than real, for the cost to us of carrying the through business is far less than that on the same quantity or kind local. Our through business largely comes to us from connecting carriers beyond one or the other terminus, and goes to points beyond our line, and the only services we render about same in the main is of the mere hitching on our engines to the cars in which the same is delivered to us loaded and haul the same over the road; even where the same is delivered to us by a shipper at one of our termini, it is generally loaded by such shipper and unloaded by the consignee. Our through trains run day and night, take less than half the same time to go over the road, are manned by a fewer number of men in the crew, and so in all these ways cost far less than the local train or freight.

Again, at our terminal points we have a business to and from the same because of the fact that they are large distributing points, doing a business in and out at all times of the year, and so giving us a return load for the car that we carry there loaded, and not requiring cars to be hauled to them empty for the loads they wish to give us, while at our intermediate or local way stations the condition of things is entirely reversed. Being an agricultural community with few manufacturing or milling interests along the line—coal

and lumber only excepted—we carry loaded cars to them with their farm supplies, merchandise, etc., during one-half of the year when they have no farm produce for export, and in the other half of the year we have to carry empty cars to those way stations for hauling off their surplus farm produce when they are not importing but living upon the produce they have harvested.

It is apparent from the facts I have stated, and I repeat it only for emphasis, that the making of lower rates to through or competitive points is not from any caprice or desire on the part of our carrier company to foster or build up the one at the expense of any other, nor to give to any person or locality an advantage over any other. These through rates are made at lower figures than intermediate rates only because for the reasons I have above stated. We can do that business at less expense than we can that at way stations, and have to meet the competition there of carriers by water. In no instance do we do business for any person or locality at an actual money loss, nor do we in any single case recoup or make up losses at any other point or from any other person by increasing our charges against another. Having our right of way, roadbed, track, rails, bridges, motive power and rolling stock as a fixed plant, whatever business we can induce that pays us in revenue above its actual cost of movement reduces by so much the charge we would otherwise be required to make upon the other or local traffic. The rivers I have mentioned are our principal competitors; they are navigable at the points we touch or cross them all the year round, excepting the Obion, Forked Deer and Big Hatchie, during the summer months.

Louisville is a city of some 200,000 people, Paducah of some 15,000, and Memphis of some 75,000. There are a large number of boats plying between Cincinnati, Louisville, Paducah and Memphis, as well as between St. Louis, Memphis and New Orleans, owned by wealthy corporations, and these make formidable rivals or competitors as to all



of our through business. In order to get a share of such business we have to make our rates correspond with those fixed by these water carriers. They are the stronger force, and control the matter.

---

I have read over carefully the petition filed before the Honorable Inter-State Commerce Commission by the Newport News and Mississippi Valley Co. as lessee of said Chesapeake, Ohio & Southwestern Railroad, verified by Mr. C. P. Huntington, President, and know the statement of facts therein set forth to be true.

JNO. ECHOLS, *Vice-President.*

---

Subscribed and sworn to before me this 10th day of May, 1887.

C. F. KREBS, *Notary Public.*

FIFTH ANNUAL REPORT  
OF THE  
Chesapeake, Ohio and Southwestern Railroad Company.

---

PRESIDENT'S REPORT.

NEW YORK, February, 1887.

The President and Directors submit herewith their report of the operations for the year ending December 31, 1886.

The Company controls a line of railroad from Louisville, Ky., to Memphis, Tenn., 392.48 miles, and a branch line from Elizabethtown to Cecelia Junction of 6 miles; total 398.48 miles and 47.01 miles of sidings.

During the year 74.66 miles of steel rails have been put in the track, leaving now but 49.76 miles of the old iron rails in the track, and it is contemplated to replace these with steel rails during the year 1887.

The organization of the Newport News and Mississippi Valley Company, which contemplated the unification in interest and management of the several lines of railway and other transportation interests of the Chesapeake and Ohio Railway Company and its western associates, having been perfected, your Board entered into a lease with that Company for the operation of this property for a period of 50 years, commencing with February 1, 1886, by the terms of which, the Lessee is to keep the leased property in good repair, to operate, maintain, add to and better the same as the business of the road may from time to time require, and to apply the remaining surplus to the payment of its Equipment Trust Bonds and interest thereon, and other interest obligations in the order of their priority, and to make such other advances from time to time as may be agreed upon between the Lessor and Lessee. Under the operation of this lease, greater efficiency and economy are secured in the administration of the several properties, and a better service rendered the public. The results thus far fully justify the wisdom of this measure.

## EARNINGS AND EXPENSES.

The Earnings and Expenses for 1886 compared with the previous years as follows:

	1886.	1885.	1884.	1883	1882.*
Gross Earnings .....	\$1,713,325.74	\$1,571,155.94	\$1,374,646.08	\$1,322,455.35	\$1,027,598.84
Operating Expenses.....	1,061,383.00	1,068,625.06	1,034,695.21	1,013,534.81	775,343.87
Surplus.....	651,942.08	502,530.88	339,950.87	308,920.54	252,254.97
Other Receipts.....	4,583.33	.....	.....	.....	.....
Total.....	\$656,525.41	\$502,530.88	\$339,950.87	\$308,920.54	\$252,254.97
Against this surplus has been charged:					
Taxes and Miscellaneous Expenses.....	.....	.....	.....	.....	\$ 73,927.17
Rentals for Leased Properties .....	.....	.....	.....	.....	77,111.17
Old Claims.....	.....	.....	.....	.....	8,593.55
Interest on P. & E. R. and First Mortgage Bonds.....	.....	.....	.....	.....	339,500.00
“ “ Second Mortgage Bonds.....	.....	.....	.....	.....	102,960.00
“ “ Equipment Trust Bonds .....	.....	.....	.....	.....	36,090.00
“ “ Loans.....	.....	.....	.....	.....	36,438.69
Total .....	.....	.....	.....	.....	\$674,520.58

leaving a deficit of \$18,095.17 in meeting all the fixed charges for the year.

Compared with the operations of the year 1885, there has been an increase in the Gross Earnings of \$142,169.80 or 9.04 per cent. and a decrease in the Operating Expenses of \$7,241.40, and an increase in the Surplus over Operating Expenses of \$149,411.20, or 29.73 per cent.

The earnings from coal have decreased \$25,911.03, or 10.80 per cent., resulting from a decrease in tonnage of 13.90 per cent., *those from local freights have increased \$47,697.84, or 8.55 per cent., and those from through freight \$102,197.06, or 31.78 per cent.,* both resulting from a proportionate increase in the tonnage carried, making a net gain for the year of \$123,983.87, or 11.09 per cent. over 1885. The total number of tons carried during the year were 695,572; of this 29.92 per cent. was coal, 36.80 per cent. local freight, and 33.28 per cent. through freight. *The rates received per ton per mile have been somewhat less, the average receipts being 1.000 cents against 1.015 cents in 1885.*

The passenger earnings show an increase of \$8,175.74, or 2.18 per cent., resulting from an increase of 3.02 per cent. in the number of passengers carried. The average rate received per passenger per mile has been 2.460 cents, which is a fraction less than was received in 1885. There has been a steady growth in both the freight and passenger traffic since the opening of the road as will be seen from the statement below, but the reduction in the rates received therefor has absorbed about all the earnings derived from the increased traffic.

	Tons		Tons Local		Tons Through		Total Tons		Rate Ton		No. of Passengers		Rate Passenger	
	Coal.	Freight.	Freight.	Freight.	Freight.	Freight.	Carried.	Carried.	Mile.	Mile.	Carried.	Carried.	Mile.	Mile.
1886.....	208,127	255,906	231,539	231,539	231,539	231,539	695,572	490,579	1.000	1.000	490,579	490,579	2.460	2.460
1885.....	241,741	237,662	174,717	174,717	174,717	174,717	654,120	476,207	1.015	1.015	476,207	476,207	2.471	2.471
1884.....	196,465	201,657	163,407	163,407	163,407	163,407	561,529	444,006	1.093	1.093	444,006	444,006	2.551	2.551
1883.....	175,262	209,168	137,682	137,682	137,682	137,682	522,112	394,334	1.300	1.300	394,334	394,334	2.626	2.626

The gross and net earnings per mile of road and per train mile have been as follows:

PER MILE OF ROAD.

Years.	Gross		Net	
	Earnings.	Operating Expenses.	Earnings.	Earnings.
1886.....	\$4,299.65	\$2,663.58	\$1,636.07	\$1,636.07
1885.....	3,942.87	2,684.25	1,261.12	1,261.12
1884.....	3,449.82	2,599.11	850.71	850.71
1883.....	3,343.84	2,540.99	802.85	802.85

PER TRAIN MILE RUN WITH

Years.	Freight		Pass'r		Average all		Operating		Net	
	Trains.	Trains.	Trains	Trains	Trains	Trains	Expenses.	Expenses.	Earnings.	Earnings.
1886.....	1.37.62	1.37.62	68.65	68.65	1.10.00	1.10.00	68.14	68.14	41.86	41.86
1885.....	1.23.93	1.23.93	58.72	58.72	1.02.03	1.02.03	69.39	69.39	32.64	32.64
1884.....	1.12.34	1.12.34	83.69	83.69	1.03.54	1.03.54	79.44	79.44	24.10	24.10
1883.....	1.22.12	1.22.12	84.34	84.34	1.08.82	1.08.82	83.40	83.40	25.42	25.42

## EXPENSES.

The operating expenses are \$7,241.40 less than in 1885, and have absorbed 61.95 per cent. of the Gross Earnings, against 67.84 per cent. in the preceding year. The additional freight traffic from which the increased earnings were principally derived, was carried with an increase of only 1.113 train miles, the addition of heavier locomotives, cars of greater capacity and efficient handling of cars and trains have increased the average number of loaded cars per train to 13.25 cars as against 11.57 cars in 1885, and the average number of tons per loaded car to 11.22 tons as against 10.55 tons in 1885, the aggregate gain being 26.60 tons of paying freight per train, an increase of 21.89 per cent. over 1885.

From the accompanying report of the Vice-President, it will be seen that the policy of steadily improving the physical condition of the property has been fully maintained.

Owing to the constant demand upon the rolling stock during the entire year, the Company was unable to keep the locomotives and cars up to the desired standard of efficiency, and therefore more than the usual amount of repairs will be required in the year 1887.

There has been expended also during the year the sum of \$311,082.29 for Construction, Improvement and Equipment, the details whereof are shown on table No. 5, and for Real Estate the sum of \$13,517.70, making a total expenditure of \$324,509.09, which has been charged to the Capital account of the Company. The additions to the rolling stock consist of 10 ten-wheel freight, and 1 six-wheel switching locomotive, 6 Passenger, 2 Baggage and Express, 1 Baggage and 200 Box Cars.

## CONCLUSION.

The result of the gross operations has been quite satisfactory; it closes with a deficit of only \$18,095.17 in its fixed charges against one of \$132,120.13 in the preceding year. The prospects for the year 1887 are encouraging,

and a surplus over all fixed charges is confidently looked for. It is not expected that the operation of the Inter-State Commerce Act will materially reduce the rates now in effect, as nearly all important stations on the road are accessible by water routes, and the rates had therefore to be adjusted accordingly.

Our tonnage is still restricted by the inadequate number of cars at our command, and 275 Box, 25 Refrigerator, 50 Gondola and 50 Flat cars have been ordered for delivery during the spring of 1887, and it may become necessary to purchase additional locomotives if the business increases, as the present number will not permit them to lay off for a sufficient length of time to have the necessary repairs and renewals made thereon.

For statements showing the financial condition of the Company, amount and character of its rolling stock, you are referred to the tables accompanying this report, and for such as pertain to the physical operation, to the Annual Report of the Lessee.

The Board desires to express its thanks to General John Echols, Vice-President of the Company, who has had the immediate supervision of its local management, and to the other department officers who have assisted him in its administration, for the gratifying results of the year's operations, and to the other employees for their fidelity to the Company's interest.

Respectfully, C. P. HUNTINGTON, *President*.

## REPORT OF THE VICE-PRESIDENT.

LOUISVILLE, KY., February, 1887.

MR. C. P. HUNTINGTON, *President*:

SIR—I submit herewith a condensed report of the operations of the road for the year ending December 31, 1886, covering one month's operation by the C. O. & S. W. R. R. Co., and eleven months by the N. N. & M. V. Co.

## EARNINGS AND EXPENSES.

Comparing the earnings of this year with those of 1885, the result is as follows :

	1886.	1885.	Increase.	Decrease.	Per Cent.
Freight.....	\$1,242,241.66	\$1,118,257.79	\$123,983.87	.....	11.08
Passenger .....	383,042.39	374,866.65	8,175.74	.....	2.18
Express.. ..	33,932.08	29,251.29	4,680.79	.....	16.00
Mail.....	32,569.08	32,569.08	.....	.....	.....
Telegraph.....	5,009.39	4,762.40	246.99	.....	5.18
Miscellaneous.....	16,531.14	11,448.73	5,082.41	.....	44.39
Total .....	<u>\$1,713,325.74</u>	<u>\$1,571,155.94</u>	<u>\$142,169.80</u>	.....	<u>9.04</u>
Operating Expenses .....	1,061,383.66	1,068,625.06	.....	<u>\$7,241.40</u>	<u>.67</u>
Surplus.....	<u>\$651,942.08</u>	<u>\$502,530.88</u>	<u>\$149,411.20</u>	.....	<u>29.73</u>



The proportion of operating expenses to gross earnings is 61.95 per cent. against 67.84 per cent. in 1885. There has been used in the repairs of the roadbed 155,149 cross ties and 116,000 ft. B. M. switch ties, a considerable amount of ditching has been done, and the annual track inspection showed a marked improvement for the year. The masonry at Otter Creek and Big Clifty has been rebuilt, extensive repairs have been made on combination bridges, and 6015 lineal feet of timber trestling have been renewed.

Included in the operating expenses of the year is the cost of the labor for relaying 74.66 miles of old iron rails with new steel rails.

New station buildings were erected at White Plains and Pryor's, new water tanks have been erected at Camp Creek and St. Elmo, and all the tanks on the road have been repainted. In the Mechanical Department, 13 locomotives have received general and 23 light repairs, and two new tenders have been built. Three Passenger and three Baggage cars have been thoroughly repaired and repainted, and the Freight equipment has received such repairs as its constant use would permit. It is hoped that the new rolling stock recently added, will enable us to put the older in thorough order during the year 1887, as the repairs have been below the average required to maintain it in thoroughly efficient order.

#### GENERAL.

There has been also expended for Construction and Improvement, the sum of \$100,701.89, the details of which are shown on table No. 5. There was put in the track 1,576 cubic yards of Stone, and 5,056 cubic yards of Gravel Ballast, 35,727 lineal feet of Fencing have been erected; the embankment that had been built over Wolf River Trestle and which was seriously impaired by high water, has been refilled. New station buildings have been erected at Fulton, and additions have been made at Water Valley, Rives, Trimble, Curve and Ripley; a deep well has been

bored at Central City, and a new water tank is in progress of erection at Hennings.

4,111.73 tons of 54 lb. and 3,731 54 tons of 61½ lb. steel rails have been laid in the main track, and 53,022 new splices, 107,168 track bolts and 52,958 nut locks have been used in making this renewal. 1.61 miles of new sidings have been added during the year, and numerous improvements of minor character have been made at other points on the road.

The estimates for improvements that should be made during 1887, will exceed the expenditures of 1886. One of the principal items will be that of ballast, in which greater expenditures than have been heretofore made will be necessary in order to derive the fullest benefit from the outlays made for steel rails.

I beg also to report that the heads of the various departments have discharged their duties with great fidelity and efficiency during the year, the result of which, I think, has been shown in the statements herein submitted.

I think that the result of the year's operations are very encouraging as to the future of the property, and that it may be safely assumed that as the physical condition of the property is improved, the results from its operation may be expected to be entirely satisfactory,

I am very respectfully,

JNO. ECHOLS, *Vice-President.*

TABLE No. 1.

*The Chesapeake, Ohio and Southwestern Railroad Company, in General Account, December 31st, 1886.*

To COST OF ROAD.....\$16,631,705.34			
“ CONSTRUCTION AND IMPROVE- MENT .....	2,119,609.42	BY FUNDED DEBT,	
“ EQUIPMENT .....	1,090,349.96	P. & E. R. R. 1st Mortgage 8% Bonds, due 1907.....	\$300,000.00
“ TELEGRAPH .....	8,155.10	P. & E. R. R. 1st Mortgage 6% Bonds, due 1907 .....	200,000.00
“ REAL ESTATE .....	439,038.86	C., O. & S. W. R. R. 1st Mortgage 5% Bonds, due 1911.....	6,176,600.00
	\$20,288,858.68	C., O. & S. W. R. R. 2d Mortgage 6% Bonds, due 1911*.....	3,865,400.00
To SUNDRY ASSETS,		Equipment Trust Bonds, 6%.....	666,000.00
Cash .....	\$2,579.60		\$11,208,000.00
Bills Receivable.....	3,551.32	BY CAPITAL STOCK,	
Stock in other Companies ..	2,250.00	Common Stock.....	\$6,030,600.00
Sinking Fund, P. & E. Bonds	45,000.00	Preferred Stock. ..\$3,860,000.00	
Stock of Supplies.....	129,230.15	Less Unissued.....	164,000.00
Due by Sundry Persons .....	4,114.26		3,696,000.00
Unadjusted Accounts.. .....	17,830.88		9,726,600.00
	204,556.21	BY SUNDRY LIABILITIES,	
C., O. & S. W. 1st Mortgage Bonds,	\$106,600.00	Loans and Bills Payable.....	\$580,457.90
“ “ 2d “ .....	1,097,170.00	Equipment Trust Notes.....	25,455.88
		Due Sundry Roads and Persons..	16,925.69
To BALANCE FROM INCOME ACCOUNT.....		Due N. N. & M. V. Co .....	216,307.25
		Unadjusted Accounts.....	21,494.44
		Unpaid Coupons.. .....	26,065.00
			886,706.16
Total.....	\$21,821,306.16	* 726 of these Bonds are ex-coupons to August, 1887.	
		Total.....	\$21,821,306.16

TABLE No. 2.  
*Income Account, December 31, 1886.*

<p>TO BALANCE FROM LAST YEAR.....</p> <p>TO EXPENSES FOR JANUARY, 1886, VIZ</p> <p>State and Municipal Taxes..... \$3,600.00</p> <p>Rentals, ..... 5,767.35</p>		<p>\$106,025.30</p>
<p>TO EXPENSES FOR THE YEAR, VIZ :</p> <p>General Expenses ..... \$1,610.50</p> <p>Old Claims ..... 8,593.55</p> <p>Interest on 1st Mortgage Bonds, 339,500.00</p> <p>“ “ 2d “ 102,960.00</p> <p>“ “ Equipm't Trust “ 36,090.00</p> <p>“ “ Loans..... 36,438.69</p>		<p>9,367.35</p>
<p>Total.....</p>		<p>\$640,585.39</p>
<p>BY RECEIPTS FOR THE YEAR, VIZ :</p> <p>Net Transportation Earnings in January, 1886..... \$31,080.98</p> <p>Net Earnings for 11 Months under Lessee..... 480,799.81</p> <p>Other Receipts..... 4,585.33</p>		
<p>BY BALANCE TO GENERAL ACCOUNT,.....</p>		<p>\$516,464.12</p> <p>124,121.27</p>
<p>Total.....</p>		<p>\$640,585.39</p>

TABLE No. 3.

*Statement Showing Receipts and Disbursements from all Sources for the Year ending December 31, 1886.*

DISBURSEMENTS.		RECEIPTS.	
Construction and Improvement .. ..	\$100,701.89	EARNINGS OVER OPERATING EXPENSES, TAXES, AND RENTALS, VIZ:	
Equipment.....	210,290.40	For Month of January.....	\$21,713.63
Real Estate.....	13,517.70	“ 11 Months operated by Lessee...	480,799.81
Decrease in Liabilities.....	\$277,073.13		\$502,513.44
Less Decrease in Assets.....	126,627.59	Miscellaneous Receipts.....	4,583.33
Equipment Trust Bonds retired.....		Sale of 322 C., O. & S. W. R. R. 2d	
Payment to P. & E. Sinking Funds.....		Mortgage Bonds.....	\$322,000.00
General Expenses.....	\$1,610.50	Sale of C., O. & S. W. R. R. Scrip,	1,230.00
Interest on P. & E. R. R. Bonds.....	36,000.00	“ 158 Equipment Trust Bonds,	158,000.00
“ 1st Mortgage “ .....	303,500.00	“ Real Estate.....	5,324.64
“ 2d “ .....	102,960.00		
“ Equipment Trust Bonds..	36,090.00	Decrease in Stock of Supplies.....	486,554.64
“ Loans.....	36,438.69		.64,496.86
Old Claims.....			
	516,599.19		
	8,593.55		
Total.....	\$1,058,148.27	Total.....	\$1,058,148.27

TABLE No. 4.  
Statement of Monthly Earnings and Operating Expenses for the Year 1886.

Months	Freight	Passenger	Mail	Express	Telegraph	Miscellaneous	Total Earnings	Operating Expenses	Surplus over Operating Expenses
January .....	\$81,989.24	\$29,297.96	\$2,714.09	\$2,117.18	\$331.54	\$815.50	\$117,265.51	\$86,184.53	\$31,080.98
February .....	82,307.76	25,797.63	2,714.09	1,962.46	* 207.62	1,055.50	113,629.82	79,757.02	33,872.80
March .....	103,095.69	28,940.16	2,714.09	2,847.41	345.98	1,060.70	139,004.03	86,083.10	52,920.93
April .....	88,414.30	28,778.72	2,714.09	3,179.91	375.61	608.15	124,070.78	81,945.00	42,125.78
May .....	76,908.70	29,892.27	2,714.09	3,103.04	453.87	620.00	113,691.97	85,003.05	28,688.92
June .....	86,599.37	29,028.72	2,714.09	2,514.98	515.47	1,234.20	122,606.83	84,351.81	38,255.02
July .....	104,377.55	35,249.19	2,714.09	3,007.96	615.00	1,454.35	147,418.14	86,411.09	61,007.05
August .....	103,155.97	37,072.87	2,714.09	2,556.57	552.64	1,347.70	147,399.84	87,492.43	59,907.41
September ..	120,378.61	33,803.14	2,714.09	2,000.00	507.27	1,540.55	160,943.66	91,119.79	69,823.87
October .....	133,797.96	36,362.93	2,714.09	3,759.56	560.70	4,241.19	181,436.43	97,313.55	84,122.88
November .....	138,445.87	32,875.03	2,714.09	3,204.94	506.58	1,236.80	178,983.31	100,419.93	78,563.38
December ...	122,770.64	35,943.77	2,714.09	3,678.07	452.35	1,316.50	166,875.42	95,302.36	71,573.06
Total, 1886	\$1,242,241.66	\$383,042.39	\$32,569.08	\$33,932.08	\$5,009.39	\$16,531.14	\$1,713,325.74	\$1,061,383.66	\$651,942.08
" 1885	1,118,257.79	374,866.65	32,569.08	29,251.29	4,762.40	11,448.73	1,571,155.94	1,068,625.06	502,530.88
Increase ....	\$123,983.87	\$8,175.74		\$4,680.79	\$246.99	\$5,082.41	\$142,169.80		\$149,411.20
Decrease ....					* 1.05.			\$7,241.40	

TABLE No. 5.

*Statement showing Expenditures for Construction, Improvement and Equipment for the year 1886.*

CONSTRUCTION AND IMPROVEMENT.		REMARKS.
Ballast .....	\$6,550.61	1,576 cubic yards stone, and 5,056 cubic yards gravel.
Car Shops and Sheds.....	142.68	Additions to Paducah Shops.
Cattle Guards and Fencing.....	768.08	35,727 lineal feet fencing erected.
Graduation .....	6,178.67	Filling in Trestles.
Machine Shops .....	738.64	Oil House, Louisville.
Machinery and Tools for Shops.....	4,549.23	Wheel Lathe for Paducah Shops.
Rails.....	50,034.70	7,843 $\frac{27}{100}$ tons Steel Rails.
Right of Way.....	695.64	Old Claims paid.
Stations and Warehouses.....	2,058.36	{ Station buildings at Water Valley and Fulton; Platforms at
Section, Tool and Watch Houses.....	38.04	{ Trimble and Curve; Stock Pens at Fulton; Cistern at Ripley.
Sidings .....	6,038.73	Watch Houses at Muldraughs Hill and Salt River Bridge.
Splices, Bolts and Spikes .....	19,296.12	3,747 feet of new Sidings, and 4,785 feet extension of old Sidings.
Telegraph .....	1,354.52	53,022 Splices, 107,168 Track Bolts and 52,958 Nut Locks.
Water Stations.....	2,259.92	Well at Central City; Tank at Henning.
Total.....	\$100,701.89	
EQUIPMENT.		REMARKS.
Passenger Cars .....	\$24,301.00	6 First Class Passenger.
Baggage, Mail and Express Cars.....	7,557.00	2 Mail, Baggage and Express; 1 Baggage or Express.
Freight Cars.....	100,893.60	200 Thirty-four feet Box Cars.
Locomotives .....	77,558.80	10 18x24 ten-wheel Freight; 1 18x24 Switching.
Total.....	\$210,290.40	

J. F. Klepper, being duly sworn, said: I live in Paducah, Kentucky, and am master of transportation of the Newport News and Mississippi Valley Company's western division, known as the Chesapeake, Ohio and Southwestern Railroad. I have been in that position and train dispatcher of that road for several years past, and am charged with the duty of handling trains upon the road, their movements, distribution of cars to and from stations so as to carry the business that is offered us. I know from what I have seen along the line of this road for several years, that we carry a far less number of empty cars to or from our termini, Memphis and Louisville, and Paducah, than we do to, or from our local or way stations. At Memphis, Paducah and Louisville we get loads both ways,—that is, to those points and from those points,—and cars that we carry to those points loaded, generally are loaded again to come away therefrom. This rule maintains as to nearly all the business we do at those points, excepting that of coal, and our empty haul of these cars is the same at all points; that is, we seldom get a return load of the kind of freight we can carry on coal cars, so have to haul them back to the mines empty from whatever points we carry them to loaded. At our intermediate or local way stations, excepting as to the matter of coal, we get a haul from those places only during the harvesting season, as the country through which we run is an agricultural country in the main, and very few manufacturing or milling interests are located along our line, and our haul to those points is principally during the spring and summer season, when the crops are being cultivated and farm supplies and general merchandise are in demand. Because of this the expense incident to the local or way station business is much greater in proportion to tonnage or distance carried than our through business. Besides this the cost of moving our freight trains varies materially as between through and local. for a through freight train runs day and night, starts usually loaded full to go through from one end to



the other, and makes the trip over the whole line, 392 miles, in about thirty-six hours. As such train has no loading or unloading to do, it requires fewer men to handle it than the local train does, and the actual money cost of such a train in wages of employes, fuel, etc., running from Memphis to Louisville is only about \$76.36. The cars it carries, too, have in the main been loaded by shippers, or come to our line from a connecting carrier beyond our terminus, and are unloaded at destination by consignees or delivered without breaking of bulk to a connecting carrier beyond our terminus to destination. Local freight—by which I mean freight to or from intermediate way stations—is, almost without exception, loaded by our own employes into the cars and unloaded by same out of the cars, and this, too, even though the freight has come to us from some connecting line. The only exception possibly is where it comes in carload lots, which is a seldom occurrence for way stations. Of necessity our local trains run only in day time, and so make an average of only about eighty-five miles per day, and, having this loading and unloading to do, together with switching in and out at way stations, a larger number of men is required to handle and manage the train and do its work. A local freight train consumes four or four and a half days in passing over the entire length of the road, and usually costs about \$101.40 in wages of employes, fuel, etc. This is an increase of wages nearly fifty per cent. above that the through train costs, and about fifteen per cent. increase of cost in fuel, etc., making an average of about thirty per cent. that the local freight train costs in going over the entire length of our road above what the through freight train costs for going the same distance. This leaves out of view entirely the value of the cars in the two trains. their reasonable rent, track account, etc. I have examined my records carefully that I keep of my train movements, for the purpose of stating exactly what our respective through and local trains usually haul, and find that our

average through freight train hauls eighteen loaded cars, while our average local freight train usually carries only ten loaded cars. The cars in a through freight train are usually loaded to their full capacity, while those of the local freight are seldom so done, and, while I cannot give the exact figures, yet am satisfied that counting out what the local car lacks of a full load, the average train load of such local train would hardly be more than seven or eight cars of full loads. It is a fact, well known too, and recognized by every practical railroad operator, that the expense of handling business to and from our intermediate or local way stations is far greater per piece, per ton, or per car, than like quantities to or from through points, and the facts I have stated above show how this is and why. I heard the testimony of Col. H. D. McHenry before the Interstate Commission at Memphis, and would say further that the train loaded with coal that he supposed, say sixteen loads from McHenry to Louisville, 112 miles, would bring in freight charges to the company about \$128.00, while our expenses for handling said train in the wages we would pay our employes, purchase of fuel and supplies for running the train would amount to only \$21.00, leaving an actual net earning on that train of about \$107.00, to be applied to the use of the cars, track, right of way, etc.

In my statement above as to the line of our road running through an agricultural country with but few mills or manufactories along the line, I would make this qualification: Within a hundred miles of Memphis there are a number of saw mills cutting up the timber through that country, and this we carry to northern and eastern markets. Those mills are grouped at principal points, such as Obion, Dyersburg, Gates and Woodstock, at each of which points we are very close to, if not upon, navigable rivers. These saw mills are about the only milling interests of any importance on our road excepting those at Louisville, Paducah and Memphis. The output of these saw mills is regular, uniform and large, and we are enabled

to arrange for it with advantage, in knowing what it is and taking care of it regularly, which also cheapens the cost to us of handling it over irregular and uncertain shippers at occasional stopping points. This lumber also is always loaded and unloaded by the shippers, and we have nothing to do therewith except haul the cars on which they have so loaded same.

J. F. KLEPPER.

Subscribed and sworn to before me by J. F. Klepper, this 9th day of May, 1887.

S. B. CALDWELL, JR.,  
Notary Public.

---

*Before the Inter-State Commerce Commission of the United States at Memphis, May the 5th, 1887.*

James M. Edwards, being duly sworn, deposes and says, as follows:

I am the Vice-President and the General Manager of the Louisville, New Orleans and Texas Railway Company, and have occupied that position since the organization of said company in August, 1884, and during the construction of its line during 1882-83-84. That company was formed by the consolidation of the Tennessee Southern Railroad Company of the State of Tennessee, the Memphis and Vicksburg Railroad Company, and the New Orleans, Baton Rouge, Vicksburg and Memphis Railroad Company of the State of Mississippi, and the New Orleans and Mississippi Valley Railroad Company of the State of Louisiana. These constituent corporations of said several States, had constructed portions of the line of railroad now owned by the consolidated corporation, The Louisville, New Orleans and Texas Railway Company, between Memphis, in Tennessee, by way of Vicksburg, in Mississippi, and Baton Rouge, in Louisiana, to New Orleans in the latter State. The construction of this line was begun

in the summer of the year 1882, and was completed in the fall of the year 1884, and opened regularly for business about January, 1885. The actual money cost of the building and equipment of this line of railroad, extending as it does some four hundred and fifty-five (455) miles of main line between Memphis and New Orleans, amounted to the sum of about fifteen million dollars (\$15,000,000).

The country traversed by the line of this railroad, prior to its construction, was in the main without transportation facilities, excepting as the same was furnished north of Vicksburg, by the Mississippi river upon the west and the Illinois Central Railroad Company some fifty (50) miles to the east, at Vicksburg a line of railway, known as the Vicksburg and Meridian Railroad, owned by the "Queen and Crescent" system (C., N. O. & T. P. Ry. Co.), was crossed, and by the Mississippi river south of Vicksburg.

At the time the construction of this line was begun the Mississippi river overflowed its eastern bank at various points between Memphis and New Orleans, the levees having become insufficient and crevasses existed, letting the flood of said river through much of the country that said line now traverses. Between Vicksburg and Memphis, for some one hundred and twenty-five (125) miles in length, the lands were wholly unprotected from the waters of said river, and south of Vicksburg or below Baton Rouge one large crevasse or break in the levee had occurred, through which the water of said river passed for twelve (12) or fifteen (15) years into Lake Ponchartrain, east of New Orleans.

Besides the work of constructing and equipping said line of railway, the individuals projecting said line of road found it advantageous, if not necessary, to aid in the rebuilding of said levees, and contributed directly to the closing of the Bonne Carre crevasse in Louisiana at an expense of some forty thousand (\$40,000) dollars, the public contributing the other monies necessary for that purpose, and advanced by way of loans to the public interested

in the North Mississippi levee districts, known as the Yazoo-Mississippi Delta, about nine hundred thousand (\$900,000) dollars more for the purpose of rebuilding that portion of said levees. This levee work has effectually shut out the waters of said Mississippi river from overflowing its east bank during the seasons of 1885, 1886, 1887, excepting only some minor breaks in 1886 which were promptly remedied.

During the two years that this line of railway has been opened for business and in active operation, its earnings have not been sufficient to pay interest upon its actual money cost. From its terminus in Memphis to the city of New Orleans the line is in active competition with steamboats, barges and other craft upon the Mississippi and Yazoo rivers, and for all business between its termini and many intermediate points where it touches said river or approaches so near thereto as to be affected or within the reach of boats on said river, it is compelled to accept such rates on the carriage of property of every class as the carriers by said water routes, with insurance added, have fixed, and from time to time do fix; for these rates by our competitors on the river are changeable, in that they have generally no fixed tariff for points where they compete with us, but take business to or from such competitive points at whatever rates they can obtain the same, regardless of those that existed twenty-four hours previous. It is the custom for steamboat lines to first ascertain what are the railway rates as published, and then make such a reduction therefrom as will enable them to take the business. I know this from frequent interviews with shippers who were seeking to obtain rates from water carriers and ourselves. Said line of railway touches the Mississippi river at Memphis, Vicksburg, Baton Rouge and New Orleans, and by branches and connecting lines touches said river at Glendale or Helena, Huntington, Greenville, Port Hudson, and several other stations adjoining these points, which are fully set out in exhibits to the petition filed by said company with the Commission.

The schedules and tariffs of charges by steamboats and other carriers along said rivers, several of which have been filed in this proceeding as exhibits to the petition of said company, or in proof, show that it is the habit and daily custom of said water craft to charge a lower rate to such points along said rivers, where said water carriers come in competition with the petitioner or other rail lines, than to intermediate way landings. This competition said railway company is compelled to meet at said points, where the same exists, or to withdraw from the business of such places.

The earnings of this company for the last calendar year amount to the sum of one million eight hundred and three thousand seven hundred and eighty-four dollars and seventy-three cents (\$1,803,784.73.) Of this amount the sum of one million one hundred and twenty-nine thousand eight hundred and forty-one dollars and fifty-seven cents, (\$1,129,841.57) was received from the carriage of freight over said line; of this latter sum there was received from the carriage of through freight the sum of five hundred and twenty-two thousand six hundred and forty (\$522,640.71) dollars and seventy-one cents, and from the carriage of local freight the sum of six hundred and seven thousand two hundred (\$607,200.86) dollars and eighty-six cents. Through business comprises shipments between points beyond, and passing over our line and between either terminus, or Vicksburg, Baton Rouge, Huntington, Greenville and Harriston for Natchez. Local business comprises shipments between points beyond, or terminals and intermediate points, and between two intermediate points.

The only department of a railroad which renders revenue is in the train service, and if trains performing one class of service, cost the same per mile run, as other trains performing a different class of service, and the wear and tear upon the track by each class is the same, each should make the same gross earnings per mile run, to make the

net earnings from each class of traffic the same in proportion to the total amount done. If there are additional charges other than for carrying, such as for terminal expenses, insurance for extra risk, &c., which are necessary for the traffic of the one class, and not necessary for the traffic of another, the trains carrying the traffic for which there are additional charges, should earn a sufficient amount above the other to meet these additional charges. While it would be unreasonable to expect every train run during the year to earn the same per mile run, still, if for a year the average earnings of one class of trains per mile run, is the same as the average earnings of another class of trains per mile run, all expenses per mile run being the same, it is just to state that the one has netted as much in proportion to the amount of its service, as the other. Now in order that each class may earn the same, they must each carry the same average amount at the same average ~~cost~~<sup>rate</sup>, or if a less average amount, then for a proportionately greater ~~cost~~<sup>rate</sup>.

The freight traffic upon our road is divided into through and local. The former is carried chiefly by through freight trains, and likewise, the latter by local freight trains.

The local train having to stop at all stations and gather up or deliver its freight, a little at the different places, loading and unloading as it goes, requires more laborers or train men, runs a less distance per day, and has cost us an average for the year of 26% more per mile run, for engineers, firemen, conductors, and trainmen, than our through freight trains. ✓

For the yearly average by accurate data, the local trains carried 10.4 loaded cars per mile run, the through trains ✓ carrying 21.4 per mile run.

A car in transit is counted loaded as long as it has any freight in it, and as the local freight is delivered as the car stops at the different stations, and although the accurate data for such calculations are not kept, it is not unreasonable to assert that the local cars would not average

over two-thirds the tonnage to a car for the entire distance counted as loaded, as do the through cars, which are almost always fully loaded and go the entire distance without lessening the weight. From this data the local freights have averaged only 2-3 of 10.4, or 7 fully loaded cars per mile, run to 21.4 on the through trains; and as the quantity carried per train mile is as 7 to 21.4, or 1 to 3, the earnings per ton per mile should be as 3 to 1, or three times as much per ton per mile for local as for the through. This, if expenses were the same; but as above stated, the expenses of train crews, etc., are 26 per cent. more on local than on through, and the charges should average sufficiently higher to meet this additional expense.

In addition to the extra cost of train service, all the expenses of local agencies are chargeable entirely to local freight, and also the greater part of agencies' expenses at such through points as are receiving and distributing centers. Local freights, except such heavy articles as coal, lumber, brick, wood, etc., are handled both by forwarding and receiving stations, and even though they may come from a connecting road, have to pass through the warehouse to be reloaded in station order, unless when in car loads. Through freight is mostly loaded by shippers, compress companies or connecting lines, there generally being nothing more necessary than to switch the loaded car into the train. To a large extent, the same is true in delivery.

While we do not keep separately the expenses of handling through and local freights at terminal and junction points, an estimate of the comparative cost can be made from data in connection with the Huntington station. This station handled, during the year 1886, 62,289 tons of through and 2,112 tons local freight. This local freight was handled entirely by the agent and his laborers. The total cost for warehousemen and laborers did not exceed \$750.00, or about  $1\frac{1}{4}$  cents per ton for the entire freight, while the cost of loading and unloading freight at Mem-



phis and Vicksburg was 17 cents per ton. This additional cost evidently is chargeable to local freight. All of the expenses of local agencies and a larger proportion of that of terminal and junction agencies are chargeable to local freight.

We find by accurate calculation that during the year 1886 our through freight earned .755 cents per ton per mile, while the local earned 2.31, or just three times as much as the through; and from the above data it is safe to say that the company netted proportionately as much, if not more, from its through business than from its local, although the former was carried for one-third of the rate per ton per mile as the latter. ✓

The local freight train runs only by day, making during the twenty-four hours only about 110 miles, while the through freight runs both day and night and will make over 300 miles during the twenty-four hours, thus utilizing the plant and making its earnings, while the other is half the time idle.

Should you ask if a strict enforcement of the long and short haul clause was exacted of our company regardless of dissimilar circumstances, whether we would raise the through rates or lower the local, I would answer, we cannot operate and maintain our road by doing either. By the revenue of both classes of freight, we have not been able to fully meet our interest charges. If we should raise the through rates to the local, we would get no through business, the water lines taking it. If we should lower the local rates to the through, we would transport it for less than cost, and either would bankrupt our company. ✓

The following statement shows the earnings and expenses of said railroad for the years 1885 and 1886, respectively:

EARNINGS.	1886.	1885.	INCREASE
Passenger .....	577,713.59	505,247.59	72,466.00
Freight .....	1,129,841.57	812,335.84	317,505.73
Express.....	23,006.98	15,628.80	7,378.18
Mail .....	43,014.43	42,224.25	790.18
Telegraph.....	12,000.00	7,000.00	5,000.00
Miscellaneous .....	18,208.16	8,280.80	9,927.36
<b>Total.....</b>	<b>1,803,784.73</b>	<b>1,390,717.28</b>	<b>413,067.45</b>
<b>EXPENSES.</b>			
Cond. Trans .....	440,506.00	363,985.26	76,520.74
Motive Power.....	355,397.93	278,148.91	77,249.02
Maint. of Way.. ...	302,451.56	274,574.30	27,877.26
Maint. of Cars.....	113,181.99	84,669.53	28,512.46
General Expense.....	41,025.43	28,628.94	12,396.49
<b>Total.....</b>	<b>1,252,562.91</b>	<b>1,030,006.94</b>	<b>222,555.97</b>
<b>Earn. over Expenses</b>	<b>551,221.82</b>	<b>360,710.34</b>	<b>190,511.48</b>

The population of Memphis is about 75,000; that of Vicksburg about 20,000; that of Port Gibson about 1,500; and that of Shaws Station about 100, or less; that of Greenville about 4,000, and that of New Orleans about 225,000.

Shaws Station was a wilderness with not a stick of timber amiss when we began to build our road through there, and it has grown to its present size and shipped about 2000 bales of cotton this season, and our rate of \$2.25 a bale for freight on cotton thence to New Orleans, does not seem to have militated against the prosperity of that community.

The statements of facts made in the petition filed by the Louisville, New Orleans and Texas Railway Company before the Interstate Commerce Commission are true. In no instance are the rates on freights on said road made for the purpose of fostering or benefiting any one community or locality or person above another, or to give any one or any place preference over any other, but we have so shaped them as to endeavor to carry whatever business we

could in the direction and to the place parties controlling it desired it should go, and have made our rates in every case as reasonable as it was possible for us to do with any sort of regard to the cost of doing the services for them, and where we have made lower rates for longer than for intermediate shorter hauls in the same direction, it has been in every such case so made because of having to meet the competition of water craft on said rivers. If we did not make our rates lower at those points, we would not get a share of the business there, and the road would be without that much revenue that it now earns, and so would be correspondingly less able to carry the local traffic that is dependent upon this route alone for transportation at the price we now do.

JAS. M. EDWARDS.

Subscribed and sworn before me this 13th May, 1887.

[SEAL]

J. M. COLEMAN, *Notary Public*.

---

A. A. Sharp being duly sworn, says :

I am forty-three years of age, and reside in Vicksburg, Mississippi. Have been connected with railroad business in the different departments for twenty-two years past. Am now in charge of the transportation department of the Louisville, New Orleans and Texas Railway and have so been for some time past. The percentage of empty cars hauled for the movement of local freight on said railroad, is largely in excess of such empties hauled for the movement of through freight, and this is true because of the fact that the country said railroad passes through is almost exclusively agricultural, with few, if any, manufacturing or milling interests except lumber ; and this farming people import principally at one season of the year, and export during the other. Their imports being of farm supplies, and merchandise, and their exports being of their farm products, the space and capacity required for hauling

their imports are far less than that for hauling their exports. Our through points, such as Memphis and New Orleans, being business centers, furnish in their larger and diversified traffic a far more regular haul, as between themselves.

I know these facts, because I have daily control, and have so had for many months past of the movement of cars on said road, and state this from what I know of how I have to send cars from point to point. Our local freight trains move only during the day time, because they have day business at the way stations with the agents, and people, there load and unload freights at such points, and are able to make only about 112 miles per day, and because of having this loading and unloading of freights, with frequent switches and sidings, require a larger number of men to work the train than is the case with our through freights.

Our through freight trains run day and night, my endeavor usually being to run them all night, and we generally carry as much as forty-five to fifty loaded cars on such trains, and they consume only thirty-six hours in passing over the entire length of the road, 456 miles. Having no loading or unloading, and but few sidings to make, they require a fewer number of men to work the train, and so are in every way less expensive to us for their cost of movement than are the local freights. Cars in the local freight trains are seldom loaded to their full capacity, and the average of so-called loaded cars in such local train is only about 10 cars, which, cut down to the average full load would only be about 7 cars.

A. A. SIARP.

Sworn to and subscribed before me, this May 12, 1887.

[SEAL]

TOM HOLEMAN, *Notary Public*.

Deposition of E. W. How, General Freight and Passenger Agent of the Louisville, New Orleans and Texas Railway, Memphis, Tenn.:

Q.—What is your name?

Edward W. How.

Q.—What is your position?

General Freight and Passenger Agent, Louisville, New Orleans and Texas Railway.

Q.—How long have you been in this position?

Since August, 1886.

Q.—How long have you been in the railroad business?

Nearly seventeen years; most of the time in the traffic department of western and southern lines.

Q.—What competition have you, if any, with water craft on the Mississippi and other rivers?

We have strong direct competition at Memphis, Huntington, Greenville, Vicksburg, Warrenton, Baton Rouge and New Orleans; also, at all points between Baton Rouge and New Orleans; at points on our Lake Washington Branch, and at points between Ethel and Baton Rouge.

Q.—What are the principal river lines you compete with to and from these points?

The Anchor Line of steamboats and the Mississippi Valley Transportation Company's line of barges between St. Louis and New Orleans; the Southern Transportation Company, between Cincinnati and New Orleans; the Red River and Coast Line, between New Orleans and Shreveport; the Greenville Packet Company and the Bayou Sara Packet Company; lines from Memphis to the Arkansas river, and numerous independent steamboats.

Q.—Does this river competition affect your rates at other points?

Yes, greatly. Nearly all of our local rates are affected by it to some extent. To illustrate: the rates from Memphis to Greenville, Huntington, Vicksburg, Baton Rouge and New Orleans have been and are the same. They are

also the same from St. Louis and Cincinnati, while the rates to Memphis are but little lower. It is evident we cannot maintain anything near our charter rates to local points from either terminus, as shipments would be made to the river points mentioned above and re-shipped thence to our local stations. We have therefore been compelled to accept greatly reduced rates for long hauls to local points—65 cents being our maximum first-class rate for any distance.

Q.—What is the distance from the line of your road to the Mississippi river?

Between New Orleans and Baton Rouge the average distance of the line from the river is one mile; between Baton Rouge and Vicksburg the average distance is sixteen miles, the furthest distance at any point, thirty-four miles; between Vicksburg and Memphis the average distance is eleven miles, the furthest distance at any point, twenty-four miles; on Lake Washington Branch, the average distance is three miles.

Q.—How do your local rates compare with those of other lines in the south, of which you have any knowledge?

They are much lower, for reasons given in answer to a preceding question, and for distances over 100 miles, are very much under our charter rates.

Q.—What does your charter, in the State of Mississippi, allow you to charge?

For first and second class freights, 65c.; for third and fourth class, 45c.; for fifth and sixth class, 32c. This for distance of 100 miles or under. In our present local tariff, the charge for a haul of over 300 miles does not exceed 65 cents on first class freight, and the other classes show a proportionate reduction.

Q.—Do you make any difference on the rate for compressed and uncompressed cotton?

Yes. Compresses on this line are located at principal points, where we can secure shipments in large lots for distant markets. There are no compresses at local points.

We can load fifty to sixty bales of compressed cotton in a box car, while only twenty-five to thirty bales of uncompressed cotton can be loaded in same car.

Q.—As Shaw's station, on your line, has been selected as an example of a point where your rates show discrimination, will you state what competition you have at that point, and its position on the line?

Shaw's station is 331 miles from New Orleans; 124 miles from Memphis, and 96 miles from Vicksburg. It is over 20 miles distant from the Mississippi river and separated from it by almost impassable bayous and swamps. Our cotton rates are: To New Orleans, \$2.25 per bale; to Memphis, \$2.00 per bale; to Vicksburg, \$1.75 per bale. I am of opinion that if our rates were double the present figure it would still be impossible to ship by any other route cheaper.

Q.—Complaint has been made of discrimination on cotton rates at Port Gibson, Miss. What is the situation at that point?

Port Gibson is 29 miles south of Vicksburg; 206 miles north of New Orleans; it is eight miles from the Mississippi river, and about the same distance from the Natchez, Jackson & Columbus Railroad. The rate to New Orleans has been, and is now, \$1.75 per bale, and to Vicksburg \$1.00 per bale. For the year ending April 30th shipments have been to New Orleans 1,435 bales; to Vicksburg 2891 bales. The rate from Vicksburg to New Orleans has this season been steadily maintained at 85 cents per bale, except for a few weeks prior to the 1st of April. Taking into consideration the insurance by river, 20 cents per bale, and the transfer at Vicksburg, there has been no time when cotton could be profitably shipped to Vicksburg and re-shipped to New Orleans, and if there had been this route was always open to shippers. The movement of cotton as above noted, would indicate this. The rate of \$1.75 per bale is in itself just and equitable and less than the charge for similar distances over other parallel lines.

Q.—In what manner is your through business affected by water competition?

The greater part of the through business of this line originates at or is destined to points where we find direct water competition, either all or part of the way, and the rates are necessarily low. To illustrate: Fully three-fourths of this through business is between direct water competitive points on our line, and New Orleans, St. Louis, Kansas City, Atchison, Omaha and other Missouri river points; St. Paul, Cincinnati, Pittsburg, Shreveport, Monroe, Pine Bluff, Little Rock and Camden, all located on navigable streams. The rates to interior points are also based on river competition to points directly located on water courses. I would further say, that so far during this season, the town of Port Gibson, Miss., has only shipped 4,326 bales of cotton in all, of which 1,435 bales were carried by our road to New Orleans at the \$1.75 per bale rate, and 2,891 bales were carried by our road to Vicksburg at the \$1.00 per bale rate. The rate on cotton, as I have above stated, excepting for a very short period prior to April 1st last, from Vicksburg to New Orleans, whether by river or rail, was 85 cents, so that this 2,891 bales of cotton that we carried from Port Gibson to Vicksburg, came there, where the rate thence to New Orleans, added to the rate from Port Gibson to Vicksburg, would be higher than had it gone directly from Port Gibson to New Orleans, which would evidence a not very great desire on the part of those shippers to get to New Orleans even at the lower rate. Their reasons I do not know, but simply give the facts as to the rates that exist. The L., N. O. & T. Ry. has carried this season into New Orleans 352,291 bales of cotton, being a larger quantity than has been carried there this season by any other rail line and more than carried there by all the water craft plying to that town. This I mention as showing that our rates to that town could hardly be said to be unreasonable. We have only carried to Memphis so far this season 57,795 bales, and our



tariffs show that our rates are as fair to the one town as to the other, and that we are indifferent as to which direction the cotton goes, simply desiring to carry it where its owners desire to send it, and the quantities carried respectively to New Orleans and Memphis would seem to confirm what I stated above, that we have not discriminated against New Orleans. There is virtually no Memphis cotton offered for shipment to New Orleans market, and though our rate on such local cotton is only \$1.00 per bale we have carried almost none, and all the river lines together competing with us have carried but 289 bales so far this season south from Memphis. The rate of 85 cents a bale from Vicksburg to New Orleans was made in order to meet the rate by steamboats and barges on the Mississippi River, and had we not taken that low rate then the 10,558 bales that we have carried so far this season from Vicksburg to New Orleans, would have been lost to our road, and have sought some other route or carrier by river. The steamboats and barge lines at Vicksburg, Memphis and other points along the Mississippi river are our rivals in every sense, and unless we make our rates to meet those offered by such water craft we do not get a share of the business there. Of this 10,558 bales I have stated we carried this season to New Orleans from Vicksburg, only 740 bales were for New Orleans market proper, all the remainder being for shipside and export thence. The movement by river from Vicksburg for the same period showing 10,779 bales south, of which only 512 bales were for New Orleans proper, the balance being through shipments. Also during this season we have carried from Vicksburg for eastern mills, via Memphis, 3,959 bales of cotton at a higher rate than we received for the 9,818 bales that we carried through to New Orleans, the Vicksburg shippers preferring to send it all rail at a higher rate; the boat movement north in same period being 3860 bales.

So far, this season, said railroad has carried from Greenville, Miss., 13,359 bales of cotton via Memphis to eastern

milling points, and 10,059 bales to New Orleans for export. We had to take this 13,359 bales via Memphis, because we could not then get the ships at New Orleans to take same at anything like the rate shippers could or would pay, the New Orleans market at that time furnishing cargoes that paid the ships better rates than this cotton could, so that in order to carry the cotton at all, we had to carry it all rail. This too, was done at a loss to the company over what it would have obtained out of the same rate through to New Orleans, for the haul was shorter and the rate was lower, per mile, and in making the rate that we did on this cotton via Memphis, we had to meet the competition of the Cincinnati and other steamboat packets and trunk lines east of Cincinnati who were offering to carry same from Greenville, east, and it was necessary for us to meet the rates offered by such water carriers, or else not get the business. In no instance have we made rates on said railroad from caprice or from any desire to benefit any one individual or community or locality above another, but in every case, we have made just such rates as we thought were reasonable and right, and where a lower charge has been made for a longer or a shorter intermediate haul, it has been so made solely because of the competition we met with river carriers at such places. The St. Louis Anchor Line of steamboats, the Cincinnati and other Ohio river lines ply the Mississippi the whole length of our road, and are wealthy, formidable competitors at every point on the Mississippi river, and, as above stated, affect us as to all business beyond our termini. E. W. HOW.

STATE OF TENNESSEE, }  
SHELBY COUNTY. }

Personally appeared before me, N. F. Lemaster, a Notary Public in and for said county and State, the said E. W. How, to me personally known, and made oath that the matters stated by him above are full and true.

In Witness Whereof, see my hand and notarial seal, at office in Memphis, this 12th May, A. D. 1887.

[SEAL.]

N. F. LEMASTER, *Notary Public.*

MEMPHIS, TENN., 4th May, 1887.

Benjamin F. Mitchell appeared before the Commission, and having been duly sworn, was examined as follows:

By Mr. Cummins—

Q.—Where do you live?

A.—At Louisville, Kentucky.

Q.—What is your business?

A.—I occupy the position of General Freight Agent of the Western Division of the Newport News & Mississippi Valley R. R.

Q.—That is the line of road known as the Chesapeake, Ohio & Southwestern between Louisville and Memphis, is it not?

A.—Yes, sir.

Q.—State whether you are acquainted with the signatures of the principal persons in business at the various way stations along that line of railroad?

A.—I am, yes, sir.

Q.—Do you know the principal shippers at the various intermediate non-competitive points there?

A.—I do.

Q.—As well as those at Louisville, Paducah, Memphis, and the principal competitive points?

A.—Yes, sir.

Q.—Tell the Commission whether the bundle of petitions I hold in my hand contains the names of nearly all the shippers of freight at your intermediate stations, as well as a very fair representation of those at Louisville, Paducah and Memphis?

The witness—Is it the lot of petitions that I gave you?

Mr. Cummins—Yes, sir.

A.—Yes, sir, they do.

Mr. Cummins: I want to present a number of petitions; they are all pretty much in the same phraseology, and come from Louisville, Paducah, and from every intermediate non-competitive way station along the line of that railroad

between Louisville and Memphis. As the witness has said, they contain the signatures of nearly all the shippers of freight along that line of road, all asking the Commission to suspend the fourth section of the law, so far as that road is concerned.

By the chairman :

Q.—How were those petitions obtained ?

A.—They were obtained by sending them to agents, and the agents asking the people to give us their signatures if they were willing so to do.

By Mr. Cummins :

Q.—Please state to the Commission at what points, if at all, your line of road meets with competition by water carriers ?

A.—We are affected by water transportation from Louisville west fifty miles, particularly at West Point, located upon the Ohio river and Salt river. We then come in competition at Rockport with Green river ; then at Eddyville with the Tennessee ; at Kuttawa with the Cumberland ; at Paducah, Ky., with the Ohio ; at Obion, Tenn., with the streams tributary to the Mississippi ; at Woodstock with the Mississippi river, and thence to Memphis.

Q.—And also at Dyersburg ?

A.—At Dyersburg with the Mississippi river also.

Q.—If I understand your tariff that you have filed with the Commission, you make lower rates to these points than you do to intermediate non-competitive points ; is that true ?

A.—We do, from the fact that we are forced to make our rates lower to competitive points to meet the rates offered by steamboat transportation, or else not carry the business.

Q.—Is that making of a lower rate at those points through any desire on the part of yourself, or the management of that road, to foster and build up the business of

those places at the expense of other non-competitive or way points?

A.—No sir. It is simply to carry our share of the business, and protect the interests of our local stations east and west in either direction, giving the local people upon the line of our road the benefit of the lowest rate that can be made by using competition with the river, giving each point east and west the local rate that belongs to it.

Q.—Have you any special rates in favor of any person or any locality, except as thus controlled by this water competition?

A.—We have no special rates furnished to any one. All rates we make less than the tariff, are for the benefit of all shippers, and are special to none. In other words, we have no specials for individuals.

Q.—Please state to the Commission the respective tonnage, local and through, of your line of road during the past calendar year.

A.—I would have to ask what you desire to get at.

Q.—How many tons of through freight do you carry, and how many tons of local freight do you carry?

The chairman: You can have those statistics made and handed in afterwards.

Mr. Cummins: You can give us the respective amounts and tell us which are the larger.

The Witness: The local business is much the largest, that is, as between the local and the through, the local is the largest.

Q.—How much larger? Was it not double your through business?

A.—More than double.

Q.—Can you tell the Commission what your average local rate earns you per ton per mile?

A.—About two and three-quarters cents.

Q.—How much were your earnings upon through freight carried, per ton per mile?

A.—1.84 cents.

Q.—I mean the rate per ton per mile?

A.—Oh, I have given the wrong figures. I should have said .669 of a cent.

Q.—Nearly .7 of a cent?

A.—Yes, sir; I had the wrong paper.

Q.—You say your local tonnage was more than double that of your through tonnage?

A.—Yes, sir.

Q.—You say your receipts on local freights were more than double, or say treble, that of your through receipts?

A.—Yes, sir.

Q.—Tell the Commission whether, if you have to grade either your through rates up to your local, or your local rates down to your through, to bring the two together, which could be done and in what way you could level them, practically speaking?

A.—We would certainly be compelled to grade our through business up to our local. We could not afford to sacrifice our local for our through freight. We look upon the through business that we gather as being so much gained, irrespective of what we have to do in the way of local trade. We consider the work on through business about one-half what it is on local, and we can afford to do it for much less than we can afford to do the local business.

Q.—What you mean is, that the cost of service is about one-half, in carrying the through freight, of what it is in carrying the local freight?

A.—Yes, sir.

Q.—Have you been along that line of road and through that country often enough to be able to state to the Commission whether or not you are so acquainted with the volume of business in the local territory through which it runs that you could, by any inducement in reducing local rates to the basis of through rates, so increase the volume of local business as to repay the losses in the rates by such reduction?

A.—That would be an absolute impossibility, for the business does not exist there. We could not increase the local, and could not increase the through business sufficiently to compensate us for the loss on the local if the rates were reduced to compare with the rates on through business.

Q.—I believe your revenue from the handling of through freight during the past season was something over \$400,000 out of a total earnings from freights of from \$1,200,000 to \$1,400,000?

A.—Yes, sir.

Q.—Suppose you advance your through rates to your local, how much of that through business would your line retain?

A.—We would not retain any of it. We would not expect people to ship by us at double what it would cost them to ship by other routes.

Q.—What would be the effect on that line of road if it were to lose that through line of business?

A.—It would simply bankrupt it, sir.

Q.—State to the Commission whether or not the larger portion of your through freight are not loaded by the shippers or do not come to you in loaded cars from your connections, and go on loaded cars to your connections beyond your line?

A.—That is generally the case; we rarely handle our through business; it is handled almost entirely by the shipper or by our connections. We do nothing but hitch on to it and haul it from one place to the other.

Q.—Is it not a fact that the trunk lines north of the Ohio river are trying to enforce the long and short haul rule of charging not less for any long haul than for any intermediate shorter haul?

A.—That is the information we gather from them, and their tariffs demonstrate that such is the case.

Q.—Will not the effect of enforcing such a rule as that

✓ be to put the weaker and shorter lines at the mercy of the trunk lines?

A.—Yes, sir; and I think that is their desire.

Q.—What is the size of Paducah, Ky., as to population?

A.—About 15,000.

Q.—As between these competing lines (your road and the river), which is the controlling factor?

A.—The river lines make the rates at all times, and we either have to follow them or come near to them, or we lose the business. The water lines name the rates of transportation.

The Chairman: It is not necessary to spend time on that.

Q.—Please state whether or not, immediately upon the passage or going into effect of this Act of Congress, the river lines with whom you are in competition, did not at once advance their rates?

A.—They did, sir.

Q.—As soon as you made competitive rates to those points again, what was their course?

A.—They reduced their rates to meet us.

By Commissioner Morrison:

Q.—By through rates, you mean rates to all competitive points, do you not?

A.—Yes, sir.

Q.—And to competitive points you haul about one-fourth as much to the local points?

A.—Our through business consists of what business we haul from Louisville to Memphis, and at the same time, what we receive from our connections.

Q.—You only mean on your road from one end to the other?

A.—On our road, from Louisville to Memphis.

Q.—You do not count any of those points between Memphis and Louisville?



A.—We consider the river points competitive points, because we come in competition with the river lines. We do not call that through business, though.

Q.—How do you regard that in the estimate of your revenue?

A.—That is local.

By Commissioner Walker :

Q.—If freight comes to Memphis and is not delivered to any other road, do you call that local?

A.—We call that local, although our rates are less in such cases, to meet competition by river.

Q.—It does not make any difference what the rates are in determining whether it is local or through, does it?

A.—It is local to our line.

Q.—It is local if it goes off at a station on your line or comes on at a station on your line, and it is through if it is delivered to some other carrier?

A.—Yes, sir.

Said witness, B. F. Mitchell, being recalled, said: That for several years past during which time he has had charge and control of the freight business over the Chesapeake, Ohio and Southwestern Railroad, and under its present owner, the Newport News and Mississippi Valley Company, the rates of freight, especially at local or way stations, have been steadily and continuously lowered, and that the reduction in said railroad company's rates of freight has been larger to its local or way business than upon its through business, although at the same time its increase of earnings have been received in larger proportion from through business than from local, because of the fact of increase of tonnage on through matter being in larger proportion than the increase of tonnage in local, and in the past year the volume of through business has increased 56,822 tons, while that of local has decreased 15,373 tons, and during the past four years our through tonnage has increased about 33½%, while our local tonnage has increased only about 20%.

I am acquainted,—pretty thoroughly so,—with the usual rates and charges upon other railroads in this portion of the country for hauling like passengers or freight, as those handled by the N. N. & M. V. Co., both through and local, and know that as compared with the usual charges of other railroads for like services, our rates are as low, if not lower, than the usual charge about here. One of the controlling elements in determining our ability to carry through business at a lower rate than local per ton per mile, is the fact that at such stations as Memphis, Louisville and Paducah, we get a larger volume of business both ways, and our return empty haul of cars to and from those through points is far less in proportion than the same at intermediate way stations. The business at these latter way stations is generally receiving or in-bound during one season of the year, and shipping or out-bound the other; that is, during the spring and summer months we haul to those way stations general merchandise and farm supplies with no country products to haul away therefrom; and in the fall and winter months we haul to those places far less of either merchandise or farm supplies, but have to carry empty cars there for the carriage of their produce away to our terminal points and markets beyond on our connecting railway lines. In this way the haul of cars to and from local stations is almost entirely empty one way, while at Louisville, Paducah and Memphis, by reason of the larger trade those cities give, we get a very considerable return haul of loaded cars that we carry to them loaded, and have to carry to these points a far less proportion of empties to be loaded.

The rule I have above stated that maintains as to loads both ways, to and from Louisville, Paducah and Memphis, applies with equal force to our through business to or from our connections at Central City, Nortonville and Fulton, Kentucky, Paducah Junction and Rives, Tennessee, at which points we connect with the Louisville and Nashville Railway, the Illinois Central R. R., the Nashville,

Chattanooga and St. Louis R. R. and the Mobile and Ohio R. R., as we not only receive from said connections at those points loaded cars for our through or terminal points, but also deliver to them there loaded through cars for points reached by their lines.

I know the table of rates referred to and filed with the Commission by Gen. R. F. Patterson, of the Memphis Cotton Exchange, on 5th of April, 1887, as showing the probable increase in freight rates between New York points and Memphis, effected by the long and short haul clause of the Inter-State Commerce Act. That table was prepared by me, and is based on the action of the Pennsylvania R. R. Co. and other trunk lines, and the rates they have published, and are enforcing from Louisville and Cincinnati east.

Taking those rates as thus fixed by the trunk lines and adding our lowest rate thereto, the advance of Memphis rates would necessarily be 45% on first-class, and in same proportion on other freight classes; these trunk lines refuse interchange of business with us except on a literal compliance with the long and short haul rule, which advances said rates as I have stated.

The Ohio, Cumberland, Tennessee and Mississippi rivers with their confluents, are our principal competitors, and are navigable at the points we cross or touch them all the year round, excepting the Forked Deer, Big Hatchie and Obion during the summer months. Various lines of steamboats and barges ply these streams, except as I have above stated, all the year round, most of them owned by wealthy corporations or individuals, and they always fix the rates at the places where we touch said streams or run close to them; and in making our rates at those points, we have to come nearly as low as these water carriers do in order to get a share of the business. B. F. MITCHELL.

Subscribed and sworn to before me this 10th day of May, 1887.

[SEAL]

CON. F. KREBS, *Notary Public.*

James L. Frazier, being duly sworn, said :

I am thirty-eight years of age, and reside in the city of Louisville, Kentucky, and am Superintendent of the Newport News and Mississippi Valley Company's railroad between Memphis and Louisville. I have been in that position on that line of road for several years past, and prior to the time that I took charge of it as superintendent, was in charge of its road department. Much of the country this road passes through, is very broken and hilly, approaching almost to mountainous, making many curves and steep grades necessary ; for this reason not only was the cost of the line in excess of what it would be through a more level country, but the cost of operating the road is also larger.

I have read the depositions given in this Inter-State Commerce matter by General John Echols, and Mr. J. F. Klepper, and know that the statements of facts given by those persons regarding the business of the road, its character and cost of doing same, to be true. We are in competition with steamboats, barges, and other craft that ply the Ohio and Mississippi rivers, as well as the Salt, Green, Cumberland, Tennessee, Obion, Forked Deer and Hatchie, as to all business at our termini. Paducah and other points on or near those rivers, and these carriers by water are constantly warring with us as to the business at points in the vicinity of said rivers, and in order to secure a share thereof it is at all times necessary that we meet the rates at which said water craft offer to take freights. The Ohio and Mississippi rivers, as well as the Tennessee and Cumberland, and the Green as far up as Hartford, are navigable all the year round, and these streams are navigated all the year round by steamboats and other craft.

The facts stated by Mr. Klepper as to the cost of doing our local freight business as compared with that of our

through freight, are true. We run our local freights along the road every day except Sunday, sometimes with full loads, much of the time with only from a half to a third of a load, or even less than that, as the business may or not be there, the expense to the company for running the train being the same whether much or little is carried, while our through freights on the other hand almost invariably have full loads, and run on quicker time, and thus earn regular sums, costing less than the local does.

It is also true that our local or way station business is very one-sided in its movement; we having to haul goods to those points through much of the year with little or no return haul for the cars, and through the other portion of the year having to haul empty cars to those stations for their farm produce, they then desiring to get but little from abroad. If we are compelled to carry freights along the road at no less charge for longer haul to or from competitive points than from intermediate way stations, there must result a serious loss of revenue, for, if we take our local business at the same rates that we do our through business, very much thereof will be carried at an actual loss to the company, and none thereof will scarcely pay as much as net revenue for its carriage as the through business does. While on the other hand, if we put up the rates on our through business to the same per ton per mile as we charge on local, shippers at competitive points will naturally take the water route in preference to our line; the water carrier offering to do the service for anything less than such forced rate would allow us to do. Either course would lose the company almost the entire sum of its net revenue, and would inevitably result in forcing the company into bankruptcy. It is a profit to the company to haul the through business at the low rates it takes the same at, for otherwise it could not thereby receive said freights and the revenue earned therefrom, and everything hauled over the road pays it some profit above the actual cost of its movement.

JAS. L. FRAZIER.

Said James L. Frazier, being duly sworn, says that the facts stated above are true.

JAS. L. FRAZIER.

Sworn to and subscribed before me, a notary public in and for Shelby County, Tennessee, this 14th day of May, A.D. 1887.

[SEAL]

TOM HOLEMAN, *Notary Public.*

**Before the Inter-State Commerce Commission**  
**OF THE UNITED STATES.**

---

In re Petition of the Louisville, New Orleans & Texas Railway Company  
AND

In re Petition of the Newport News and Mississippi Valley Company  
As Les-ee of the Chesapeake, Ohio and Southwestern Railroad,

**FOR RELIEF,**

**Against Water Competition,**

**UNDER THE PROVISIO TO THE FOURTH CLAUSE OF THE ACT  
TO REGULATE COMMERCE.**

---

In submitting these cases to the Commission, it has seemed to me that it would be a saving of time and attention, both to the Commission and myself, to present them together and on one and the same argument, for the two cases are quite alike in almost every important particular, and what seems pertinent in the case of either road, is as much so for the other.

I desire also to refer, as need may be in either case, to the proofs taken on behalf of the other, as well as for both companies to refer to such evidence as has been taken by others relative to the questions under consideration.

The line of the Louisville, New Orleans and Texas Railway runs parallel with the Mississippi river from Memphis to New Orleans, touching the river at Vicksburg, Baton Rouge, and every station between Baton Rouge and New Orleans, a distance of ninety miles, and over branches and other rail lines connects with said river at Helena, Hunt-

ington, Greenville, Natchez and Port Hudson—besides all the stations on the Greenville and Lake Washington branch are virtually on said river as well as on said railway.

While thus touching said river at these points, said railway line at intermediate stations is, as the proof shows, distant from ten to thirty-five miles therefrom and is shut off from access to or from the river by lakes, bayous and marshes that lie between the railway and the river, leaving the country along far the greater part of the three hundred and sixty miles between Memphis and Baton Rouge dependent on this rail line for transportation facilities—that territory for much of the year being inaccessible from the river because of said marshes, etc., and for want of roads and bridges.

The Newport News and Mississippi Valley Company's road, between Louisville and Memphis, follows the course of the Ohio and Mississippi rivers its entire length, and beginning at the foot of the great falls of the former stream, crosses the Salt, Green, Cumberland and Tennessee rivers, meets the Ohio again at Paducah, crossing the Obion, Forked Deer and Hatchie before coming to the banks of the Mississippi at Memphis. Besides connection is made again with said rivers over connecting rail lines to Evansville, Henderson, Owensboro, Cairo, Columbus and other points.

It is not controverted that these rivers are navigable and are navigated by steamboats and barges all the year through, except, during the summer months, the Hatchie, Forked Deer and Obion.

The proof shows that Louisville, Memphis and New Orleans are the principal cities and trade centers in the Mississippi Valley, with populations ranging from 75,000 to 225,000, and a commerce ranging from \$150,000,000 to \$200,000,000 each per annum, while Paducah with its 15,000, Vicksburg 20,000 and Greenville 4000 inhabitants, also enjoy a large trade throughout their adjacent country and import as well as export large quantities of freights.



It is also plainly shown in the evidence that the steamboats and barge lines plying said Ohio and Mississippi rivers are owned and operated by wealthy persons and corporations, and that such water route carriers compete earnestly and effectively with these railways for all the traffic at river points, bidding lower rates from time to time, according to circumstances.

The proof shows, beyond question, that the cost of the service to petitioners for the carriage of through freights is far less per ton per mile than is the case with local or way station matter.<sup>1</sup> indeed, it is not controverted that the average local freight train costs 25% to 50% more than the through freight train per train mile—so far as train service is concerned—and the average tonnage per train mile, is only one-third as much on local as on through freight trains.

This fact established, all the seeming difference in the charge for local and through traffic disappears, for it will not be contended that any rule of common or statute law requires these carriers to serve either class of shippers for a less charge than is exacted of the other. And the evidence submitted shows beyond doubt that, first deducting the actual outlay for haul of local traffic, there is no greater sum for net earnings received by these carriers from this class of their business than they derived from their through freights after deducting therefrom the like actual cost of haul.

The statements of business done by petitioners during former years shows—and no intelligent mind will fail to concur—that, if required to rigidly comply with a fixed rule of charging no greater compensation for the transportation of property for a shorter than for a longer distance, over the same line, in the same direction, they will advance their charges for through traffic up to the same as is charged for their local freights, and this for two reasons,

---

1 See depositions, pp. 38-41

first, that a reduction of the local rates would be the doing that service at less than actual cost, and second, that even though the advance of through rates resulted in a loss of the greater part of that class of freights, yet that loss would be lighter than the other, and prudence requires the choice to be made of the lesser evil.

The evidence also establishes that the through freights are secured to these carriers only by the lower rates of charge offered by petitioners, without which inducement such freights would go by the rival lines on said rivers, or in many cases, not be transported—that thus petitioners secure a profit not obtainable otherwise, and this too, without thereby doing injustice or injury to other individuals or localities

The petitions filed in support of these applications by the hundreds of merchants and trades people of Louisville, Paducah, Memphis, Greenville, Vicksburg, Baton Rouge, and other towns, preclude any suggestion that the granting the relief prayed for—that is, suspending the fourth section of the Act of Congress, known as the Interstate Commerce Act—as to these railway lines, as to business to and from such water competitive points, is alone in the interest of these carriers by rail, and demonstrates the interest of the public who are affected by these rates and charges. These people speak as of one mind, and with one voice against the enforcement of a rule that places an embargo on their commerce more effectual than many blockades we have seen, and restricts each little territory to live within itself, shutting out all imports and fencing in all surplus desired to be exported,<sup>2</sup> and deprives them of all competition between carriers.

Besides the petitions from all the local or non-competitive stations of any importance on the C., O. & S. W. R. R.,<sup>3</sup> signed in most cases by every merchant and shipper at such

---

2 See Reports Memphis Cotton, and Merchants Exchanges, Appendix No. 1.

3 See petitions from Ripley, Dyersburg, Mayfield, Litchfield, etc.

town, show that these people appreciate the advantages to them of building up trade centres in the interior, and have no promptings of selfish jealousy to deprive others of natural advantages solely for their own benefit. These memorials from the local or way stations prove that petitioner's rates are reasonable and just, as well as that those people understand and know that the refusal of the relief sought for would be of no benefit to them in any reduction of charges to or from their stations, but would result alone in advances of the through rates to or from the competitive points.

The evidence of Gen. R. F. Patterson, and other merchants of Memphis, supported as it is by the statement of representative business men from hundreds of towns and cities throughout that broad valley, including Louisville, Evansville, Nashville, Paducah, Little Rock, Shreveport, Vicksburg, Jackson, Meridian, Birmingham, and others too numerous for recital, plainly shows the injurious effect on the trade and commerce of the country that the enforcement of this law will cause, in destroying these inland trade centres, for the rebuilding the waste places of seaboard cities; that while cities on the coast, with markets in other countries, and carriers free from congressional control, will profit by this statute, it will be at the expense of such inland markets, and to the detriment of the agricultural, manufacturing, mining and milling interests throughout the interior.

The evidence of Gen. Patterson,<sup>4</sup> corroborated by that of Mr. Mitchell,<sup>5</sup> and by numbers of other witnesses,<sup>6</sup> enables the Commission to understand the heavy tax that the long and short haul rule levies on the commerce of all interior points, and the numbers of factories and mills already closed down throughout the South, because of the advance of

---

4. See Appendix No. 1, and Stenographer's Report of Evidence.

5. See p. 57.

6. See evidence of A. K. Ward, J. L. Wellford, Newport, Arkansas, Goodwin, et al., Stenographer's Report of Evidence.

rates on the trunk lines north of the Ohio and Potomac under this rule, are but the first slight symptoms of what will result all through that section of the Union should the temporary suspension granted by the Commission not be made permanent.

I ask the especial attention of the Commission to the evidence of Sidney Bernheimer of Port Gibson, Miss., who complains not against a suspension of the long and short haul clause, but only of what he and the witnesses Phelps, Campbell, Wallace and others of New Orleans term an unjust discrimination, or excessive charge. I do not understand the Commission to be enquiring now into the merits of that question, although I might with confidence rest even that enquiry on the evidence filed, and which I shall refer to again. Mr. Bernheimer, however, expressly admits that he and his community, situated at an interior point off the line of the river where the rail line has no competition, expect to pay more for their shorter haul to New Orleans than Vicksburg, which though farther, yet enjoys the natural advantage of the river route and its cheaper rates. I take it the witness Bernheimer but expressed the general opinion of the people who live at way stations; the common sense and good judgment of the country does not expect to reverse natural conditions, and Bernheimer is corroborated by the hundreds of trades folk along petitioner's lines who have memorialized the Commission in favor of granting the relief prayed for. Mr. Bernheimer testified that he expected to pay more for the 206 miles haul from Port Gibson to New Orleans, than Vicksburg people did, though Vicksburg was thirty miles longer haul. I quote his language :

"I claim if the railroad company can carry cotton for 75 cents from Vicksburg to New Orleans, or 50 cents, they certainly can carry from Port Gibson for less than \$1.75. We do not expect it to be hauled as cheap as Vicksburg, but we do expect it at a lower rate than \$1.75. \* \* We are perfectly willing and expect to pay more, but not such a difference as that."

And in reply to the question by Commissioner Walker, that

“As I understand you, you think there should be some discrimination in favor of competitive points?”

The witness further said :

“Yes, sir; we expect that, but not such a great difference. We don't expect to receive freight at the same price Vicksburg does, because it is a competitive point, and has the river in front of it, but we do expect the difference not to be so great as it now is, certainly.”

Then replying to a question by the chairman, the witness answered that he thought 25 cents a bale as much difference as should be allowed.

While considering this Port Gibson matter, I ask the attention of the Commission to the evidence of Mr. E. W. How,<sup>7</sup> with the statistics he gives as to the movement of freights from Port Gibson during the past season when the rates complained of were in force, except that Mr. How states that the rate from Vicksburg to New Orleans, until the latter part of March, 1887, was 85 cents, and that the 75 cent rate took effect recently. He admits the \$1.75 rate from Port Gibson to New Orleans, and the \$1.00 rate Port Gibson to Vicksburg. Mr. How then shows that of a total export from Port Gibson of 4326 bales of cotton, only 1435 went direct to New Orleans, while 2891 were shipped to Vicksburg for market, notwithstanding the higher rate thence to New Orleans or eastern points.

Vicksburg with its compresses is able to induce cotton from adjacent country to come to its market, and it seems in this case has controlled two-thirds of the Port Gibson cotton notwithstanding more freight charges were paid thereon than had it gone in the first instance direct to New Orleans. Port Gibson could ship New Orleans direct at \$1.75 per bale, while to ship Vicksburg cost in freight \$1.00, and thence to New Orleans 85 cents additional, and

---

7 See p. 51.

which cotton would further have to pay marketing charges at Vicksburg. If Port Gibson preferred to do this with two-thirds of its cotton; rather than ship direct to New Orleans at the lower rate; does it help the claim set up now by Bernheimer, Phelps, Wallace and others for lower rates?

That Vicksburg has a territory from which farm produce naturally flows to the Vicksburg market, is further shown by the fact appearing in Mr. How's evidence,<sup>8</sup> that the L., N. O. & T. Ry. Co. hauled out of that city since September 1st, 1886, 14,517 bales of cotton, 9,818 going to New Orleans for ship, and 3,959 going all rail east, while river and rail together carried to New Orleans for market only 1,252 bales. Remembering that the Queen and Crescent rail route also have a line direct from Cincinnati to Vicksburg, and the Mississippi and Ohio River Packet Lines, passing Vicksburg in their route from Cincinnati to New Orleans, and that these must have obtained their share of Vicksburg cotton, one must admit that Vicksburg and its territory are large enough to determine their own best interest, and too large to be sacrificed in the interest of any rival.

The facts stated by Mr. How,<sup>9</sup> as to Greenville and the movement and direction of its cotton, confirm what I have said regarding Vicksburg and Port Gibson.

If, as Messrs. Phelps, Wallace and others in New Orleans claimed, the rate of \$1.00 per bale Memphis to New Orleans is excessive and discriminative, as compared with the \$2.25 per bale rate from Shaw's, 125 miles nearer New Orleans, why is it that the river carriers do not take the cotton? The statement from the Memphis Cotton Exchange of the cotton movement thence during the past eight months,<sup>10</sup> shows that the river lines have carried south only 289 bales against 62,031 bales taken north and east during the same time. When Mr. Phelps mentioned that the

---

8 See p. 51.

9 See p. 52.

10 See Appendix No. 1, *post*.

\$1.00 rate Memphis to New Orleans on L., N. O. & T. Ry. was unjust to New Orleans, as evidenced by the fact that 59,265 bales of cotton had been brought by that carrier for shipment by steamer from New Orleans to New York at 65 cents, and that steamboats and barges had not been able to secure but 289 bales of cotton from Memphis to New Orleans during the same period, was it not apparent that such cotton could not be marketed again in New Orleans, as well as that it paid 65 cents per bale more to reach New York, than had it started from New Orleans proper?

I do not mention these facts for the purpose of drawing any inference against the advantages or the prosperity of the New Orleans market. but only to show, as it seems to me, all the facts as to trade movements through this vast cotton growing area, do conclusively show. that unlike water, these freights do not naturally, and should not be compelled, to float down stream and pay toll as they pass through New Orleans. Trade and commerce make their own levels, and ever shifting, ever changing, with each new condition adapting their modes, enables the surplus products of each locality to find markets at lowest cost. The ability and enterprise of New Orleans may have been lulled into inactivity by the great natural advantages of former decades, but I feel sure that, appreciating now the need for exertion on their own part to hold the supremacy in the cotton markets of the world they have so long enjoyed, her people will begin anew such enterprises as will secure them against the inroads of merchants from every quarter.

The position, however, of the New Orleans Cotton Exchange, as presented by Mr. Phelps and others, is one expressly excepted from the operation of the long and short haul rule. They say :

“The present rate of freight from Memphis, via Louisville, New Orleans and Texas Railway and Morgan Line of steamers to New York is 32 cents per hundred pounds of compressed or uncompressed cotton. Out of this

there is paid \$2.00 per car for costs of transfer at New Orleans. The steamship line receives 60 per cent. of the through rate, or 19.20 cents per hundred, leaving 12.80 cents, less the cost of transfer, for the railway. This is equivalent to between 60 and 65 cents per bale for the haul from Memphis to New Orleans. The tariff rate of the Louisville, New Orleans and Texas Railway Company (as per schedule) is \$1.00 per bale for the same service in hauling a bale of cotton to New Orleans as the terminal point. In the one case the railroad company received 12.80 cents per hundred pounds; in the other case 20 cents per hundred pounds is charged. The service in both cases is precisely the same. The through rate, as fixed by the railway company, is thus a direct discrimination against the trade of New Orleans. The tariff rate by steamer from New Orleans to New York is 25 cents per hundred pounds; the Louisville, New Orleans and Texas Railway Company's rate from Memphis to New Orleans is 20 cents per hundred. So that cotton shipped to New Orleans for sale, and thence shipped to New York, pays 45 cents, as against a through rate of 32 cents per hundred, a discrimination of 13 cents per hundred pounds against New Orleans.

"The facts above presented suggest a fundamental question, to which we beg to invite the attention of the Commission. Does the railway company make a living profit out of the 65 cent rate on through business? If it does, then we submit that the local rates are not 'just and reasonable' within the meaning of the act; because, as will be observed, the company charges \$2.25 from Shaw's station, which is 124 miles south of Memphis. If the railway company does not make money at the sixty-five-cent rate, then it is recouping its losses on the Memphis business by unduly high rates from local points. That is contrary to the intent and purpose of the Inter-State Commerce Act, as your petitioners understand the measure.

"In submitting this case we ask the Commission to lay down the primary principle that before suspending section 4 in any particular case, in order to enable a railway company to meet competition, they will require proof that the competitive rate sought to be made will yield a living profit, and that local rates be made relatively reasonable; in other words, that railways cannot take business from competitive points at cost, or at a positive loss, and recoup themselves out of the business at non-competitive points. In this connection we beg to call your attention to the following figures, taken from the daily market reports of the Memphis Cotton Exchange: The total shipments south by river from September 1, 1886, to April 8, 1887, were 279 bales, while the shipments south during the same period by rail were 59,265 bales by the Louisville, New Orleans and Texas Railway Company and 66,642 bales by the Mississippi and Tennessee Railway, which is the connection of the Illinois Central. These figures would indicate that the policy pursued by the railways from Memphis has destroyed competition by the river, and it is evident that the effect of such discrimination is to deprive New Orleans of its legitimate advantage as an exporting point. All of which is respectfully submitted."



This involves a construction of the words "*in the aggregate, \* \* \* under substantially similar circumstances and conditions \* \* \* over the same line,*" as used in the fourth section of the Inter-State Commerce Act.

Do the words "*in the aggregate \* \* \* over the same line*" allow two or more connecting carriers forming a through line between points beyond the terminus of either to make through rates over such through line without thereby limiting either to the proportion of such through rate accepted in order to secure such through business as to its own business beginning and ending on its own road?

In arriving at the proper construction to be given any doubtful phrase of statute law, it is a well settled rule that the evils sought to be remedied and the legislative intent about the matter, should be looked to, and considered, and where the intention of the framers of the statute as gathered from their official records show their construction, and the language used in the statute is not in conflict therewith, that construction will be adopted.<sup>11</sup> This rule is one phase of the rule as to contemporaneous exposition,<sup>12</sup> and the expression of Mr. Justice Matthews in the case of *District of Columbia v. Washington Market Co.*,<sup>13</sup> cannot be held as overruling the case of *Blake v. National Banks*.

When this statute was under consideration by Congress, we find, in examining the history of its formation, that serious conflict of opinion was expressed and amendment after amendment was adopted to avoid difficulty after difficulty that arose during its discussion, and the Chairman of the Senate Committee having charge of the bill is authority for the statement that—

"The Senate, however, by a deliberate vote, placed in the bill which was passed by the Senate during last session, these words, '*under like circumstances and conditions,*' and did it, the Select Committee, not having reported these words to the Senate in the original bill. \* \* \* The Senator from Missis-

11 *Blake v. National Banks*, 23 Wall 307.

12 *Sedgwick on Stat. and Const. Law* 251.

13 *District of Columbia v. Washington Market Co.*, 108 U. S. 254.

sippi has a right to put whatever construction on those words he chooses, and of course he will do so; but I say, not as the chairman of the committee, but simply as a Senator upon this floor, that those words were put in there by this Senate after the Select Committee had failed to report them, and they were put there because the original section reported by the committee was too rigid and it was feared that it would interfere with the general commerce of the country, and when they were put there they were put there to mean something and they do mean something. They mean just what they say, that you shall not charge more for the shorter than for the longer distance on the same line in the same direction under substantially similar circumstances and conditions, and those conditions and circumstances may be, if you please, the fact that one place is a competing point and that another place is not, the fact that one place furnishes a large amount of business and the way station does not furnish perhaps more than a car load, and that it incurs additional expense and all that sort of thing. No court, no commission, and no lawyer can afford to say that those words do not mean anything when they are put in there.<sup>14</sup> \* \* \* The joint through rates which are made by two or more railroad companies between points upon their respective roads are made over an entirely different and distinct line from that over which any one of the companies individually make rates. And they are also made under different 'circumstances and conditions' from those which govern and determine rates made over a single railroad."

The Senator then proceeding to answer some questions asked by Mr. Blanchard, Commissioner of the Central Traffic Association, in a published letter, uses several illustrations to show the meaning of the phrase "*over the same line*" to be that of a combination of two or more connecting roads, and such a "line" changed as any one or more of its component roads went out or another or others came into the combination, and expressly says:

"Suppose there are four roads coming into Albany, and each one of them does business with the Boston and Albany road. At the other end of its line, if you please, each one of them has its arrangements of through rates, by which from Kansas City, the Wabash, for instance, carries freight to Albany, and on to Boston on that line; another road from Chicago carries freight from Chicago to Albany and on to Boston on that line; another one from Detroit carries freight to Albany and on to Boston on that line. Each one of these different roads makes its own combinations, its own arrangements with the Boston and Albany by which grain or other products are transported over its line from Albany to Boston; and the charge that the Albany and Boston road makes or the agreement that it makes, if you please, with these different, separate lines has nothing to do with what it charges one

or the other of them, and it has nothing to do with its own local rates from Albany to Boston. \* \* \* It does not make the slightest difference in the world, it has nothing to do with it. One is a line of railroad by itself; the other is a line of railroad in conjunction with one, two, or five others, if you please, and the one rate does not control the others."<sup>15</sup>

The Senator had in mind, and it may be a help to the Commission to consider the language of this fourth section as originally presented to the Senate by its committee, and the various changes made in its form and expression before it assumed final shape and passed that body, for as it passed the Senate it was, as I understand it, adopted by the Conference Committee of the two Houses and became the law.

This fourth section originally read as follows :

"That it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or property subject to the provisions of this act for a shorter than for a longer distance over the same line, in the same direction, and from the same original point of departure : Provided however, that upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property ; and the Commission may from time to time make general rules covering exceptions to any such common carrier, in cases where there is competition by river, sea, canal, or lake, exempting such designated common carrier in such special cases from the operation of this section of this act ; and when such exceptions shall have been made and published, they shall have like force and effect as though the same had been specified in this section. Any common carrier who shall violate the provisions of this section of this act shall be deemed guilty of extortion, and shall be liable to the person or persons against whom any such excessive charge was made for all damages occasioned by such violation."<sup>16</sup>

After much discussion the advocates of the short haul succeeded in striking out the words "*and from the same original point of departure.*"<sup>17</sup>

When this was done, upon the motion of Mr. Cullum, the Senate adopted an amendment striking out the words, "*covering exceptions to any such common carrier, in cases where*

<sup>15</sup> Cong. Record, vol. 18, p. 521.

<sup>16</sup> Cong. Record, vol. 17, page 3552.

<sup>17</sup> Cong. Record, vol. 17, pages 3834-4191.

there is competition by river, sea, canal, or lake," for the purpose, as Mr. Cullum said, "*that simplifies the section, and at the same time preserves all the power the Commission had before.*" And as Mr. Harris added, "*it gives a broader discretion to the Commission than it had before,*" in which expression Mr. Cullum concurred.<sup>18</sup> After discussing and acting on various amendments as to passes and free transportation, the Senate next considered an amendment to strike out the original text and insert the clause "*for the transportation of passengers or of the like kind of property subject to the provisions of this act.*"<sup>19</sup> It was pending this amendment that the phrase "*in the aggregate*" was debated, one gentleman suggesting that there was some uncertain but significant meaning hidden behind those words, and that they had been smuggled into the bill by some railroad expert;<sup>20</sup> and it was agreed that the expression "*in the aggregate*" had the same meaning as though the bill read "*shall not charge or receive any greater total compensation,*" and "*precluded the idea that this section was to be considered or construed as a mileage provision.*"<sup>21</sup> And that "*those words were intended to mean this, that this bill shall not be construed by any tribunal to mean that the railroad company should be compelled to charge the same rate, or as low a rate per mile for the short as it charges for the longer haul.*"<sup>22</sup> As stated by Mr. Cullum, "*those words were inserted in the section as a matter of fact on the suggestion of the Senator from Tennessee (Mr. Harris,) who was simply desiring to get the section in such shape as that it could be construed to mean what it says in contradistinction of the idea that they should not be allowed to charge so much a mile. In other words, that it should not be a pro ratu provision, but it should be in the aggregate as to the whole distance.*"<sup>23</sup> Or, as stated by Mr. Call: "*Suppose there are two companies, common carriers in inter-state*

---

18 Cong. Record, vol. 17, pages 4223-4.

19 Cong. Record, vol. 17, page 4398.

20 Cong. Record, vol. 17, pages 4399-4400.

21 Cong. Record, vol. 17, 4399—Mr. Cullum.

22 Cong. Record, vol. 17, page 4399—Mr. Harris.

*transportation, using two lines of road, one line of road may charge twice as much as the other. This bill does not prohibit it, it simply requires that the aggregate on both roads, including their terminal charges, shall be the same."*

And after these explanations of the meaning of the phrase "*in the aggregate*," Mr. Camden proposed to amend by striking out the original text and inserting "*of the like kind of property, under substantially similar circumstances and conditions*," which was adopted,<sup>23</sup> and is the language of the act. These words "*under substantially similar circumstances and conditions*," were borrowed from the second section, and must be construed as intended to have the same meaning in this fourth section as in the second.

Mr. Cullum, as Chairman of the Senate Committee on Commerce, on 14 April, 1886, having previously reported the Inter-State Commerce Bill from his committee to the Senate for action, in calling for the consideration of the bill, said, that before proceeding to make any remarks in regard to the bill, he desired, in behalf of the committee, to offer a few amendments which were mainly formal. These amendments were adopted. Mr. Cullum then proceeded to say that he now wished to say a few words generally with reference to the bill. As his views throw light on all these questions I give his words, passing over his remarks as to the first and third sections. He spoke as follows regarding the second and fourth :

"The second section strikes at the evil of which the most serious complaint is made, and made justly, by prohibiting and declaring unlawful every variety of personal favoritism, or unjust discrimination between persons. Its provisions are confined to that one great evil, and the object of the section is to place all shippers upon an absolute equality as to the rates charged for a like service under substantially similar circumstances. This section specifically prohibits special rates, rebates, drawbacks, or other devices, for discriminating between shippers similarly situated, and making like shipments.

"Section three, in general terms prohibits undue discrimination against localities, but section four is more specifically directed against that evil, by prohibiting a greater aggregate charge for a shorter than for a longer distance

over the same line, in the same direction, and from the same original point of departure. This is the general declaration made, and it is agreed that this is the principle that should be observed as a general rule. The committee found, however, that this principle was not of universal application; that there were cases in which the railroads were compelled to make lower rates for longer than for shorter distances, by the great law of competition, which is stronger than any law we can make, and that in some cases it would be a great hardship to the public as well as to the railroads to rigidly enforce the general principle.

"In order to provide for these exceptional cases it was agreed that the commission should be authorized to make exceptions in cases where on investigation, it may be found necessary and proper, and by general rules cover exceptions in cases where there is competition by river, sea, canal, or lake, from the operation of the fourth section of the act. In the judgement of at least a majority of the committee such a provision of law is necessary in order to get the benefit of any short haul provision, and at the same time do no injustice to the business of the country. The public sentiment of the country favors a provision of law prohibiting, without exceptions, a charge of more for a short than for a long haul on the same line of road, in the same direction, and from the same point of departure.

"As a general proposition, common carriers should not be allowed to do so, and in hundreds and thousands of instances great injustice is done to localities by such a mode of unjust discrimination, and the committee have attempted to provide against such discrimination by prohibiting it except in such cases as a wise Commission may determine that the interests of the commerce of the country and common fairness to the common carrier require that exceptions shall be made.

"The interest of both the producer and consumer of this country require that the food and fuel, which make up half of the property transported, shall be brought as nearly together as possible, so that the producer shall be able to produce and live, and that the consumer shall be able to buy, and eat and live. Distance must be as nearly as possible overcome, so that the grain and produce of the far west and north may be put down at as cheap rates as may be by the side of the manufacturer, the consumer, in the east.

"So, Mr. President, looking at the question in its effect upon the business and prosperity of the whole country, the committee did not and do not now believe that such a provision of law as would prohibit the greater charge for the shorter distance in all cases would be a wise one; hence the qualification in the bill.

"Those who favor an absolute short haul provision assert that the provision of the bill will amount to nothing; while those against any law touching the short haul question assert that it is too strong, and should be further modified, or go out of the bill.

"As it stands it is largely in the discretion of the Commission, and as the whole scheme of national control is new in this country, in my judgment it is wisest to go no further than the committee proposes on so doubtful a

point, until we see the operation of the law, if it shall become one, and get a report from the Commission on the question, if one shall be established."<sup>24</sup>

These debates with the several amendments adopted, show, it seems, too plain for need of argument thereon, that the legislative intent was not, because of anything in the fourth section, to limit a railroad company in its rates over its own road to such proportion of a through rate as it might under agreement with connecting lines consent to receive on through business passing over its road to or from such connections.

It is not contended by the protestants of New Orleans that the through rate from Memphis via New Orleans to New York is less than the rate from Memphis to New Orleans, and so long as that is the case, I submit with confidence that, there is nothing in the statute nor otherwise that would put the carrier to need of making defense or showing justification.

I should perhaps call the attention of the Commission to the fact that the one dollar rate from Memphis to New Orleans complained of is, as shown on the tariff sheet submitted by the New Orleans Exchanges, on *uncompressed* cotton, while, according to all the evidence taken, the 32 cents per *cwt.* rate to New York via New Orleans, out of which the rail line, as stated, received only 65 cents per bale for its part of the haul from Memphis to New Orleans, was on *compressed* cotton.

The dissimilarity of the circumstances between the haul of compressed and uncompressed cotton is fully proven—in the compressed state more than double the quantity can be put into a car than when in the uncompressed condition.

The dissimilarity of the circumstances and conditions attending the haul of 1,435 bales of cotton from Port Gibson to New Orleans scattered through eight months, an average of six bales per day, or conceding that the bulk thereof was carried during four months, then an average

---

24 Cong. Record vol. 17, part 4, pp. 3470, et seq.

of twelve bales per day, not compressed and in local trains that can average only 110 miles per day,<sup>25</sup> and a haul of 206 miles, when compared with that of hauling 10,558 bales from Vicksburg, compressed, in through trains that make the run within twenty hours, at the rate of 44 bales per day through eight months, or 88 bales per day in four months—one or two car loads per day—is too plain to need further comment.

The same comparison is to be made of the 2,000 bales from Shaw's Station, at the \$2 25 rate, and the 65,672 bales from Memphis at the 65 cents (32 cents per *cwt.* to New York) rate.

As to what are not such "*substantially similar circumstances and conditions*," as will justify the commission in granting relief under the proviso to the fourth section of the act of Congress, I suppose that whatever doubt, if any, may exist as to other cases, there can be none as to the cases made out by these petitioners.

Here we have the uncontroverted fact of water competition, pure and simple these cases being in a large measure free from the question of competition of other rail lines, or that of rival markets—except only as one locality clamors for the *penalty of the bond*, because as they testify the result of such competition between rail and water lines is that "*it helps to make Memphis, artificially, a better cotton market, relatively, than she should be. A bale of cotton at Memphis is practically placed in the same position as a bale of cotton at New Orleans on the seaboard,*"<sup>26</sup> or, as again stated, "*if the commission rule that they ought to equalize their rates, those cheap through rates from Memphis would not last very long.*"<sup>27</sup>

Does then water competition make such dissimilar circumstance?

---

25 See evidence of Jas. M. Edwards, p. 47.

26 See evidence of Ashton Phelps. Stenograph, p. 22.

27 See evidence of Ashton Phelps. Stenograph, p. 24.



In submitting these cases, on motions for temporary suspending orders, before the Commission at Washington, in April, I said that it was a settled rule of the common law to foster and encourage competition between common carriers, and to prohibit contracts between them that tended to suppress competition;<sup>28</sup> and I suggested that this act of Congress "to regulate commerce," was not intended to have the effect of annulling that rule of the common law, but on the other hand bore on its face every evidence of the legislative intent, to preserve and promote that rule or policy. In support of this I referred to the provision of the fifth section, prohibiting, in express terms and under severest penalties, such common carriers as were made subject to the statute from making any contracts for the pooling of either their freights or their gross or net earnings, or any portion thereof—then to the sixth section, prohibiting any advance in the published rates of charge by common carriers by rail, who alone are subject to the statute, yet allowing them to *reduce* their rates *without notice*—and then, further, to the significant fact that while Congress, by this statute, sought to remedy such abuses of duty as had grown up among these carriers by rail, as set forth in this act, yet it had expressly refused to bring carriers by water under the terms of the statute,<sup>29</sup> and thus leaving them free from the long and short haul and all other clauses of the act, and of whose daily violation of every requirement of the proposed law Congress was fully advised,<sup>30</sup> it was in plainest language said that such water route carriers should be free to compete with the rail lines and competition be fostered. Thus the rail carriers were prohibited from making contracts tending to suppress competition among themselves, and to further such competition were allowed to reduce rates at will; and water route carriers were left free of all statutory restraint,

---

28 Hooker v. Vanderwater, 4 Denio p. 349.

29 Cong. Record, vol. 17, p. 4240.

30 Cong. Record, vol. 17, p. 4233.

so that competition as between them and carriers by rail might be untrammelled.

Congress could not have spoken more emphatically its intention that competition should be encouraged, and that nothing done by it should have the effect of lessening the benefit to the public of such rivalry among or between the common carriers of the country.

It is reasonable, also, to suppose that Congress was advised of the construction placed by American and English courts on the words, "*substantially similar circumstances and conditions*," and adopted those words in view of their known meaning.

Judge Deady, of the Federal Circuit Court, had, years before, said,<sup>31</sup> in construing a statute of the State of Oregon, containing a clause of similar purport with the fourth section, that—

"As to the matter of long and short hauls, the question, although *prima facie* one of discrimination, directly involves the right to a reasonable compensation. I assume that the State has the power to prevent a railway company from discriminating between persons and places for the sake of putting one up or another down, or any other reason than the real exigencies of its business. Such discrimination, it seems to me, is a wanton injustice, and may therefore be prohibited. It violates the fundamental maxim which, in effect, forbids any one to so use his property as to injure another—*sic utere tuo ut alienum non laedas*. The provisions of the Act that I have condensed in paragraphs 3, 4 and 6 aforesaid, are intended to prevent this practice.

"But where the discrimination is between places only, and is the result of competition with other lines or means of transportation, the case, I think, is different. For instance, the Act prescribes a reasonable rate for carrying freight between Corvallis and Portland, or from either, to points intermediate thereto. But Corvallis is on the river, and has the advantage of water transportation for some months in the year. The carriage of goods by water usually costs less than by land, and as water craft are allowed to carry at a rate less than the maximum fixed for the railway, they will get all the freight from this point unless the latter is allowed to compete for it. But if, to do this, it must adopt the water rate for all the points intermediate between Portland and Corvallis, where there is no such competition, it is in effect required to carry freight to and from such points at a less rate than that which the Legislature has declared to be reasonable, or else give up the business of Corvallis altogether. And the same result would follow as to

---

31 *Exparte Koehler*, 23 Fed. Rep. 529.

Salem and other points on the east and west side lines, where there is convenient access to water transportation.

"If the Legislature cannot require a railway corporation formed under the laws of the State to carry freight for nothing, or at a less rate than a reasonable one, then it necessarily follows that this provision of the Act cannot be enforced so far as to prevent the railway from coming with the water craft at Corvallis and other similarly situated points, even if in so doing they are compelled to charge less for a long haul than for a short one in the same direction. It is not the fault or contrivance of the railway that compels this discrimination, but it is the necessary result of circumstances altogether beyond its control. It is not done wantonly, for the purpose of putting the one place up or the other down, but only to maintain its business against rival or competing lines of transportation. In other words, the matter, so far as the railway is concerned, resolves itself into a choice of evils. It must either compete with the boats during the season of water transportation, and carry freight below what the Legislature has declared to be a reasonable rate, or abandon the field and let its road go to rust.

"Nor can the shipper at the non-competing point or over the short haul complain so long as his goods are carried at a reasonable rate. It is not the fault of the railway that the shipper who does business at a competing point has the advantage of him. It is a natural advantage which he must submit to, unless the Legislature will undertake to equalize the matter by prohibiting the carriage of goods by water for a less rate than by rail. And when this is done, the inequalities of distance, as well as place, may also be overcome by requiring goods to pay the same rate over a short haul as a long one, and then the shipper at Ashland will be as near the market as any one."

And in this decision that learned judge was following the rule adopted by the English courts where it was held that the Railway and Canal Traffic Act of 1854 does not prevent a railroad company from making special rates or charges to a terminus to which freights can be carried by other lines of carriers with which the railroad is in competition.<sup>32</sup> While other cases in English courts may qualify this rule,<sup>33</sup> yet, as the Federal Courts through Judge Deady had adopted the earlier ruling, it is not unfair to say that Congress used the words in the sense they had been received and treated by our courts.

This view is, it seems, confirmed when the uniform con-

32 Foreman v. Ry. Co., 2 Nev. & Mac. 202.

Harris v. Ry. Co., 3 C. B. (N. S.) 693.

33 Ry. Co. v. Evershed, 24 Eng. Moak 625, and other cases.

struction placed by the framers of the statute upon this section is considered.

I have above stated their construction at length, showing how competition by water, whether by "*river, sea, canal or lake*" was expressly stated as entitling a carrier by rail to exemption from this fourth section, and that these words were struck out from the section only lest the discretion of the Commission would be limited by their expression.<sup>34</sup>

On another ground, however, the cases of these petitioners come within a rule of the English courts entitling them to make the lower charge for the longer than for intermediate hauls over the same line and in the same direction, and that is, that, as fully shown by the evidence of numbers of witnesses<sup>35</sup> and which is not controverted, this through traffic is carried at a smaller cost to the carrier, and to the carrier's direct and immediate advantage and profit, as well as thereby securing a business that returns a profit for the service that otherwise would be lost to it and go by the rival line.<sup>36</sup> In England it seems established that a carrier may make differences in its rates for larger quantities, or for longer distances than for smaller quantities for shorter distances, so as to derive an equal profit to itself, and that in determining whether such course constitutes an unjust preference "*the courts may take into consideration the fair interests of the railway itself,*" and that it will justify such a discrimination where it is shown that the pecuniary interests of the company are thereby affected.<sup>37</sup>

This rule finds strong support in the opinion of the Tennessee Supreme Court, holding it no unjust discrimination for a carrier to charge shippers at a certain point

34 Cong. Record, vol. 17, pages 4223-4.

35 See testimony Mr. Edwards, p. 45; Sharp, p. 49; Klepper, p. 39; Frazier, p. 66.

36 Evershed v. Ry. Co., 20 Eng. Moak 323.

Ransome v. Ry. Co., 4 C. B. (N. S.) 135.

Gurton v. Ry. Co., 1 B. & S. 112, and other cases.

37 See Wood's Railway Law, secs. 197-198, and references.

on its road different rates for like and contemporaneous service, the lower rate being given to those living at a distance from the station, and who had to haul overland beyond the station, and who were by such lower rates induced to ship by this carrier rather than another.<sup>38</sup>

And the New Hampshire Court of Appeals illustrates another phase of the same rule in holding that a discrimination in favor of a larger dealer is not inequality but reasonable equality.<sup>39</sup> This was perhaps more strongly expressed by Mr. Justice Willes of the English bench when he said that—

“Taking into account the lessened expense, pro rata, for transporting the greater amount of property in a single body, or in a given time, the carrier would, by absolute equality of rates for all cases, receive a greater price rate for carrying the larger quantity than the smaller, and thereby make an unjust discrimination against the person transporting the larger quantity of goods.”<sup>40</sup>

This opinion was adopted by Circuit Judge Wallace of the Federal Court,<sup>41</sup> and may be said to be pretty well adopted as our rule.<sup>42</sup>

One marked difference in the circumstances and the law in the English cases with those under this statute, and for that matter with our State statutes on this subject as well, will be remembered by the commission, and which must be kept in mind when determining how far we should be influenced here by those English rules, and that is the “equality clause,” or rather the English statutes on this subject of control or regulation of carriers and commerce, apply both to carriers by water and rail—railway and canal—while in America only the rail line is affected by the statute.

38 *Raigan v. Aiken*, 9 Lea 609.

39 *R. R. Co. v. Forsaith*, 59 N. H. 122.

40 *Ry. Co. v. Sutton*, L. R. 4 H. L. 226.

41 *Menacho v. Ward*, 27 Fed. Rep. 529.

42 *C. & A. Ry. Co. v. People*, 67 Ill. 23.

*Munhall v. R. R. Co.*, 92 Penn. Stat. 150.

It is not claimed that the rates of charge for freight or passage on petitioners' roads are in excess of their charter limit, nor that their rates are not sanctioned by the commissions of the States through which these roads pass. The petitions aver that such State commissions, where established, have approved the rates of petitioners, and the proof shows those avermen's to be true.

Again the proof conclusively shows, and it is not controverted, that, only by means of such through or competitive business, at its lower rate, are petitioners enabled to earn any income above actual operating expenses—and, even with such business, do not earn as much as six per cent. annually on the actual money cost of their roads and equipment.

I submit that the evidence shows clearly that petitioners' cases come within one or more, or, indeed, all of these rules, entitling them to relief as prayed, and whether the Commission will follow, what seems the more restricted doctrine announced by some English judges, or the broader opinion held by American courts, and, which, as the debates in Congress I have referred to, clearly show; was the mind of the framers of this statute, in either case the petitioners are entitled to the relief prayed for, which is a permanent order suspending the operation of the fourth section of the act to regulate commerce as to all freight business from or to the points shown as water competitive points, and including connections as to such business.

HOLMES CUMMINS,  
*Counsel for Petitioners.*

---

At the suggestion of a member of the Commission I print, in Appendix No. 2, the syllabi of all of the English cases on this subject, that I have at hand, for your convenience for reference.

---

---

APPENDIX No. 1.

---

---





# PETITION

—OF A—

JOINT COMMITTEE,

APPOINTED BY THE

COTTON AND MERCHANTS' EXCHANGES

TO THE

INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES.



# PETITION

OF A

**Joint Committee Appointed by the Cotton  
and Merchants' Exchanges**

—TO THE—

**INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES.**

---

MEMPHIS, TENN., May 2, 1887.

*To the Honorable Interstate Commerce Commission of the  
United States :*

In the city of Memphis, in Tennessee, there are two organizations, one known as the Cotton Exchange, the other as the Merchants' Exchange, and in one or the other of these associations nearly every business man of the city is a member.

On the 22nd day of April, 1887, these organizations, in view of your session in our city, appointed the undersigned a joint committee to lay before you such information as to the trade and commerce of this section of our country, and the effect of the long and short haul clause of the law under which you are organized on this trade and commerce, as will enable you to appreciate fully the condition of this section, and adjudge understandingly whether this provision of the law be enforced or suspended.

The city of Memphis, situated on the border line of three States, does almost exclusively an Interstate commerce; and was located in view of its great natural advantages for the collecting and distributing central market of a great area. Kansas City, St. Louis and Louis-

ville, each some four hundred miles to the north, northwest and northeast, and New Orleans, the same distance to the south, are the nearest rivals we have; nearly half of Tennessee and Alabama, more than half each of Arkansas and Mississippi, together with large portions of other States beyond these, depend on our market for the sale of their products and the purchase of their supplies of every kind. These people are interested equally with the merchants of Memphis in maintaining here a great market town where their farm products, as well as their minerals and manufactures will command the best prices, and too, where in return they can buy near to their places for use, all the necessaries, and, indeed, luxuries of life, in return.

As evidencing the character of our trade as well as showing its volume, we append hereto as Exhibits A, B, C and D, statements from the records of our Exchanges of what business we have done during the past year, and we make same a part of this petition.

Exhibit D comprises not more than one-fifth of the aggregate business outside of cotton, according to the estimate of the Secretary of the Merchants' Exchange, estimating our total commerce, including cotton, at \$150,000,000.

This is the largest interior distributing market of groceries and provisions in the Union, in proportion to population. We sell yearly :

Of cotton.....	\$30,000,000
Of provisions.....	3,494,046
Of grain.....	1,073,499
Of dry goods.....	6,207,200
Of boots and shoes.....	2 406,845
Of cotton seed and oil products.....	1,564,185
Of lumber.....	248,779
Of fruits.....	83,772
Of miscellaneous articles.....	104,921,674

Before railway lines were thought of, Memphis enjoyed transportation facilities second to no interior city in the Union. That great arm of the sea, which we call the Mississippi river, reaching with its confluent through the heart of every State within five hundred miles and more around our bluffs, bore on its bosom craft of every kind, carrying merchandise and produce from and to every other market of the world.

Inland towns then hauled overland to and from our market, and enjoyed the advantages our position afforded them. It was a benefit to them to have such a market so near. The great river ran by our doors, not theirs, yet conferred on them advantages and benefits hardly inferior to those we enjoyed. Our trade then, as now, was wholesale, buying and selling in large quantities and on a small margin of profit, while our country neighbors, who then hauled to and

from us were then, as now, retail dealers of smaller quantities, though at larger profit, and the cost of transportation between our market and the other great trade centres of the world was also then on a small profit, the carriers by water competing between themselves for our exports and imports, offering for our full cargoes lower rates than they could afford for intermediate or way landings and a piece-meal shipment ; besides the expense to our country neighbors, who traded with us, of hauling their produce here and their purchases of supplies back to their stores, was far greater in proportion to the distance carried than we paid to the water carriers on the same articles when brought to or carried from Memphis by the boat load. It was natural advantages such as these that made our market, and when the era of railroads began, in order to preserve these conditions in the more rapid transit of the rail, this community expended about two millions of dollars in aid of railways connecting this city with other principal markets.

As we understand the charges of the railway lines here, they now and for all time have been based on the simple idea of all wholesale trade. Influenced by the competition of the carriers by water, these railways were compelled to carry freights to and from Memphis at the lowest charge they could afford, and unless their charges, considering the advantage of time and insurance, were as low as those of the water carriers, our freights came and went by water. However, we fully understood how a railway carrying one or more full train loads to or from our market, shipped in bulk over long distances, could well afford to charge for same lower rates, than on the small parcels gathered by frequent stops from many way stations ; the same rule that governs all wholesale trade applies, as we understand it, with equal force to railways, steamboats, etc.

As said by one of England's great jurists, " that custom, in all branches of business, always has been, and is, to move, care for, and sell a large amount of a given commodity in one parcel or in a given time, at a less price rate per pound, yard, or ton, than a smaller quantity of the same commodity distributed in many and smaller parcels, at different times. The expense of handling, carrying and storing the smaller amount is much greater, *pro rata*, than that of the same operations upon the larger amount in one body ; and a discrimination in favor of the larger dealers is not inequality, but reasonable equality. By any other construction the statute would defeat itself ; for taking into account the lessened expense, *pro rata*, for transporting the greater amount of property in a single body or in a given

time, the carrier would, by absolute equality of rates for all cases, receive a greater price rate for carrying the larger quantity than the smaller, and thereby make an unjust discrimination against the person transporting the larger quantity of goods."

Since our Exchanges charged us with this duty, we have been in daily session, learning the views of every business interest in our city and of many tradespeople from the country dealing with Memphis, and we have not found one single person who believed that it was to the interest of this section of the country to have the long and short haul clause of the law enforced.

No complaint has come to our attention, although through our daily papers we have asked every one interested to assist us in presenting the needs of this community to you, of injury from non-enforcement of the long and short haul clause, nor has anyone requested to be heard against its suspension, accepting carriers by water, whose motive or interest we need not mention. We are informed that about the 5th of April, ultimo, when it was not known that the long and short haul rule would be suspended, one of the largest carriers by water on the Mississippi river, advanced their rates to double their former charge, only to drop back when the wire advised of your action in suspending the law. This is proof conclusive of the benefit of competition.

We submit herewith as exhibits hereto, and part of this petition, reports of various branches of trade showing the injurious effect of this long and short haul rule on each separate interest, to which we ask your earnest attention, and such representatives of these interests as you may desire are ready to appear before you to substantiate these statements.

The table of rates adopted by such of the railway lines as were preparing for compliance with the long and short haul clause prior to its temporary suspension by your Honorable Body, submitted to us, show that the enforcement of that rule, literally, will result in an advance of freight rates between Memphis and Eastern cities of about forty per cent. without any reduction of the local rates to way stations in our vicinity, and for the reason that heretofore such way stations have enjoyed the benefit of our through competitive rate. The railways, for the ascertaining of such way station rate, taking the Memphis rate as a basis, and adding thereto the local rate from Memphis, while a strict enforcement of the long and short haul rule, as construed by many, will grade each successive station reached, up one step higher than the one last passed, destroy all interior markets and

fasten each locality down by legal clamps to its own distance from the seaboard. Such "*unreasonable equality is inequality*," forces each little territory to live within itself, shuts off the interchange of products of distant climates and relegates us to the condition of ages long past.

We are assured by the evidence we have taken that the earnings of nearly, if indeed, not every carrier line from way or local stations, are larger than from through or competitive points, and is, in fact, so much larger that a moment's thought is unnecessary to determine whether the one shall go up or the other come down, and unless your Honorable Body continue the suspension you have granted such railway lines will be compelled to advance their through rates and withdraw from competitive business with the result of so advancing their rates to and from Memphis without advantage to way stations. This will throw our freights back on the water routes, and seriously cripple our entire trade. Should it result in forcing our patrons throughout adjacent territory to distant cities and over trunk lines, who seem to clamor for this rule of law, credits established here will necessarily be broken up, our friends compelled to trade abroad at whatever disadvantage, and serious disturbances to every interest in this section result.

If the sales of cotton should be diverted from Memphis to interior points and shipped from these interior towns to the seaboard cities and mills, the rates of freight would be more than the amounts now paid to Memphis, and from Memphis to the seaboard cities and mills. In addition to this, the interior points could not possibly attract buyers from all parts of the world as Memphis now does, thereby making a difference of half a cent to one cent in price, which would come out of the pocket of the producers.

The trade of Memphis is based and dependent upon cotton, of which we handle from 600,000 to 700,000 bales annually, being the second cotton market of the Union. This large amount of cotton is drawn here by advances of money to country merchants and planters to raise and gather the crop, and to this, the largest inland market in the world, buyers from England, European continent, as well as our Eastern mills, are attracted. The large amount of cotton sold and shipped from here, according to every known rule of trade, entitles shippers to the low rate of freights heretofore obtained through the sharp competition of river and rail. Since the year 1860, when cotton worth  $10\frac{1}{4}$  cents per pound, was charged \$4.10 per bale from Memphis to Boston, increased quantities shipped with competi-

tion have enabled the carriers to grant us on cotton now worth  $10\frac{1}{4}$  cts per pound a rate of \$2.50 per bale to same destination, which makes a difference saved to the producers of cotton sold in this market of about \$1,000,000 per annum.

The trains that come to Memphis loaded with merchandise from other markets return with full loads. During the present season, one rail line carried at one time from this place for the Eastern seaboard five full trains of cars loaded with more than 6,000 bales of this cotton, and even then we needed more transportation.

Therefore, on behalf of the commerce of Memphis and adjacent territory, we respectfully petition your Honorable Body to grant a permanent order suspending the long and short haul clause of the statute, as to the several railway lines entering our city, and for general relief.

J. T. PETTIT, Chairman,  
R. F. PATTERSON,  
F. M. NORFLEET,  
W. W. SCHOOLFIELD,  
JNO. W. DILLARD,  
NAPOLEON HILL,  
W. J. CRAWFORD,  
JNO. K. SPEED,  
Z. N. ESTES,  
JNO. W. COCHRAN,  
Joint Committee.

HENRY HOTTER,  
Secretary.



Exhibit A.

COMPARATIVE STATEMENT

—OF—

Cotton \* Received \* at \* Memphis, \* Tenn.,

WITH VALUE OF SAME FOR PAST TWENTY-TWO YEARS.

[Official figures of Memphis Cotton Exchange.]

Year.	Receipts.	Value.
1865-66.....	112,296 bales	\$ 23,000,000
1866-67.....	218,226 "	29,000,000
1867-68.....	253,207 "	25,000,000
1868-69.....	247,698 "	31,000,000
1869-70.....	290,731 "	29,588,500
1870-71.....	511,432 "	39,552,356
1871-72.....	380,233 "	36,550,617
1872-73.....	415,255 "	37,500,000
1873-74.....	429,327 "	32,864,981
1874-75.....	322,004 "	22,540,808
1875-76.....	487,376 "	27,070,615
1876-77.....	384,358 "	20,040,426
1877-78.....	412,393 "	20,887,705
1878-79.....	386,129 "	17,456,892
1879-80.....	409,809 "	23,752,529
1880-81.....	470,267 "	23,090,109
1881-82.....	339,240 "	18,825,888
1882-83.....	510,789 "	25,069,524
1883-84.....	450,077 "	23,917,920
1884-85.....	430,127 "	21,441,831
1885-86.....	545,566 "	23,623,007
*1886-87.....	653,013 "	29,385,585

\*To April 30th.

Exhibit B.

# ANNUAL COTTON STATEMENT.

## RECEIPTS AT MEMPHIS.

(Official figures of Memphis Cotton Exchange.)

WHENCE RECEIVED.	1885—86	1884—85
Memphis & Charleston Railroad.....	77,646	79,142
Mississippi & Tennessee Railroad.....	58,941	46,094
Louisville & Nashville Railroad.....	43,860	46,333
Memphis & Little Rock Railroad.....	82,548	73,731
Chesapeake, Ohio & Southwestern Railroad.....	24,449	25,256
Louisville, New Orleans & Texas Railroad.....	38,267	13,482
Kansas City, Springfield & Memphis Railroad.....	19,571	19,858
Kansas City, Memphis & Birmingham Railroad.....	17,442	139
Mississippi River.....	89,989	64,951
White River.....	20,857	16,649
St. Francis River.....	7,332	3,201
Arkansas River.....	11,673	4,488
Wagons and Other Sources.....	52,991	36,803
Total.....	545,566	430,127

## SHIPMENTS FROM MEMPHIS.

ROUTE.	1885—86	1884—85
Memphis & Charleston Railroad.....	107,190	58,660
Mississippi & Tennessee Railroad.....	38,731	54,614
Louisville & Nashville Railroad.....	112,698	86,226
Chesapeake, Ohio & Southwestern Railroad.....	97,284	56,620
Louisville, New Orleans & Texas Railroad.....	51,208	42,573
Kansas City, Memphis & Birmingham Railroad.....	11,524	.....
Steamers North.....	105,006	93,911
Steamers South.....	18,819	40,085
Total.....	542,460	432,689

Exhibit C.

# COTTON RECEIPTS AT MEMPHIS

For Eight Months Ending April 30.

[Official figures of Memphis Cotton Exchange.]

WHENCE RECEIVED.	Since Sept. 1st.	
	1886-87.	1885-86.
Memphis & Charleston Railroad .....	88,805	75,113
Mississippi & Tennessee Railroad.....	57,904	58,189
Louisville & Nashville Railroad.....	49,564	42,605
Memphis & Little Rock Railroad.....	136,504	78,464
Chesapeake, Ohio & Southwestern Railroad.....	41,482	23,945
Louisville, New Orleans & Texas Railroad.....	57,795	35,411
Kansas City, Springfield & Memphis Railroad.....	30,205	19,145
Kansas City, Memphis & Birmingham Railroad.....	21,473	17,137
Mississippi River.....	83,068	88,314
White River.....	21,286	20,594
St. Francis River .....	4,849	7,288
Arkansas River.....	10,738	10,985
Wagons and Other Sources .....	48,518	51,559
Total .....	652,191	528,749

# SHIPMENTS FROM MEMPHIS

For Eight Months Ending April 30.

ROUTE.	Since Sept. 1st.	
	1886-87.	1885-86.
Memphis & Charleston Railroad.....	110,296	95,335
Mississippi & Tennessee Railroad.....	66,642	29,584
Louisville & Nashville Railroad.....	156,329	81,779
Chesapeake, Ohio & Western Railroad.....	157,629	90,570
Louisville, New Orleans & Texas Railroad.....	65,672	47,925
Kansas City, Memphis & Birmingham Railroad.....	4,119	11,523
Steamers North.....	62,031	88,098
Steamers South.....	289	18,794
Total.....	623,007	463,608

**Exhibit D.**

# ANNUAL STATEMENT

—OF—

## Receipts at Memphis and Shipments From Memphis OF LEADING ARTICLES FOR 1886, TOGETHER WITH VALUE OF SAME.

(Official figures of Memphis Merchants' Exchange.)

	Receipts.	Estimated Value.	Shipm'ts	Estimated Value.	
Apples .....	bbls 33,509	\$ 83,772 50	22,087	\$ 55,217 50	
Bran .....	sk 35,935	42,042 00	36,074	42,661 58	
Beans and Peas .....	bbls 5,612	9,259 80	5,714	9,142 40	
Butter .....	pkgs 11,872	118,968 00	4,275	42,750 00	
Bagging .....	rolls 131,498	492,117 10	134,973	506,148 00	
Bacon .....	pkgs 31,544	1,230,216 00	26,318	1,026,502 00	
Boots and Shoes...	pkgs 68,767	2,406,845 00	59,663	2,088,205 00	
Corn .....	bu 1,109,811	545,905 50	609,653	304,826 00	
Cheese .....	pkgs 26,970	161,820 00	23,045	165,808 00	
Coffee .....	sk 56,075	947,667 50	50,795	858,435 50	
Cotton Seed .....	sk 1,301,512	795,366 00			
Cotton Seed Oil .....	bbls 12,338	185,070 00	70,235	1,053,525 00	
Cotton Seed Oil Cake .....	sk 370	131 75	638,328	510,660 00	
Cotton Ties .....	bbls 150,336	165,369 60	154,677	170,144 70	
Dry Goods .....	pkgs 31,036	6,207,200 00	32,079	6,415,800 00	
Eggs .....	pkgs 12,422	63,352 20	1,805	11,913 00	
Flour .....	bbls 269,117	1,143,967 75	264,845	1,125,191 00	
Hay .....	bales 142,278	99,554 00	114,583	80,210 00	
Hats .....	pkgs 8,209	492,540 00	6,170	370,200 00	
Live Stock.	Hogs .....	head 10,721	85,768 00	1,683	13,464 00
	Sheep .....	head 7,446	22,338 00	1,233	3,699 00
	Cattle .....	head 9,759	195,180 00	3,327	66,540 00
	Horses and Mules .....	head 9,059	1,177,280 00	8,554	1,112,020 00
Lard .....	pkgs 72,110	201,908 00	49,893	139,899 40	
Lumber .....	M. feet 17,698½	248,779 00	10,201½	153,015 00	
Liquors .....	pkgs 15,588	1,347,040 00	13,643	1,091,440 00	
Meal .....	bbls 29,246	67,027 90	94,116	211,761 00	
Molasses .....	bbls 15,469	229,774 65	23,679	351,499 50	
Nails .....	kegs 89,293	200,909 25	69,035	172,587 50	
Oats .....	bu 809,361	291,369 96	592,805	213,409 80	
Onions .....	bbls 9,327	23,327 50	7,348	18,370 00	
Potatoes .....	bbls 53,245	83,178 75	72,120	126,210 00	
Pork .....	bbls 4,365	52,380 00	6,212	72,544 00	
Pork Sides .....	lbs 36,857,500	2,211,450 00	35,406,283	2,124,376 98	
Rice .....	pkgs 1,964	78,160 00	2,405	72,150 00	
Sugar .....	hds 1,376	82,560 00	1,240	76,260 00	
Sugar .....	bbls 52,765	1,015,726 00	44,120	1,455,960 00	
Tobacco .....	pkgs 67,822	678,220 00	60,989	609,890 00	
Wheat .....	bu 262,583	236,224 00	9,110	8,199 00	

Total value Receipts .....	\$23,720,705 51
Total value Shipments .....	23,940,634 86

---

---

## APPENDIX No. 2

---

---



## APPENDIX.

---

*In the Matter of the Complaint of Frederick Ransome against  
The Eastern Counties Railway Company. May 29.*

By their scale or tariff a railway company divided the places through which their lines passed into districts, and charged at a reduced rate per ton for coals carried a given distance from Petersburg or Ipswich respectively, when consigned in full train loads of 200 tons or 35 trucks. The advantage of this reduced rate was given to persons consigning coals from Petersburg to one of these districts in full train loads, though on their arrival at Cambridge the company for their own convenience thought fit to break up the train, and carry about one-third of it forward by the ordinary goods trains, the whole consignment, however, ultimately finding its way into the district to which it was addressed by the consignor.

*Held*, that this was not giving any undue preference to the Petersburg coal dealers, or imposing any undue prejudice on the Ipswich dealers, although the latter were unable to avail themselves of the lower rate of charge for coals consigned by them to the same district, by reason of the insufficiency of the demand for sea-borne coals at the places comprised therein.

C. B. Rep., N. S., vol. 8, p. 709.

(Eng. Com. Law Rep., vol. 98, p. 708.)

*In the Matter of the Complaint of William Garton and Moses Stone against The Bristol and Exeter Railway Company.*  
*June 13.*

A railway company has no right to impose a charge for the conveyance of goods to or from their station where the customer does not require such service to be performed by them.

The B. and E. Railway Company closed their goods station at B at 5.15 p.m. against all persons except their agent W., who had a receiving house about a mile distant from the station, and from whom the company received goods up to 8 p.m. For the conveyance of goods from the receiving house to the station W. charged 1s. 8d. per ton on all goods above 3 cwt., and 3d. for each package below that weight.

*Held*, upon the complaint of a rival carrier, that the refusal to receive goods sent by him to the station after 5.15, unless sent through the receiving house of W., was imposing upon him an undue prejudice, within the 17 and 18 Vict., c. 31, s. 2. although it was sworn on the part of the company that the goods so brought to the station by W. came there properly classified, weighed and prepared for loading.

The general rate of charge for the carriage of goods from Bristol to Bridgewater and *vice versa* was 6s. 8d. per ton for first-class, 8s. 4d. per ton for second-class, 12s. 6d. per ton for third class, and 16s. 8d. per ton for fourth-class goods.

The company had special contracts with certain grocers and ironmongers at Bridgewater, under which they agreed to carry all their grocery and ironmongery goods at a uniform rate of 6s. per ton, including delivery.

*Held*, an undue preference, it not appearing that this diminished charge was justified by any special circumstances of advantage to the company, or to meet competition from another railway or any other mode of carriage.

Com. Bench Reps., N. S., vol. 6, p. 639.

(E. C. L., vol. 95, p. 638).



*In the Matter of the Complaint of Thomas Nicholson, the younger, and Isaiah Birt Nicholson against the Great Western Railway Company. Nov. 9.*

It is competent to a railway company to enter into special agreements whereby advantages may be secured to individuals in the carriage of goods upon the railway, where it is made clearly to appear, that, in entering into such agreements, the company have only the interests of the proprietors, and the legitimate increase of the profits of the railway in view, and the consideration given to the company in return for the advantages afforded by them be adequate, and the company are willing to afford the same facilities to all others upon the same terms. Nor is the second section of the Railway Traffic Act, 17 and 18 Vict. c. 31, contravened by a railway company carrying at a lower rate, in consideration of a guarantee of large quantities and full train loads at regular periods, provided the real object of the company be to obtain thereby a greater remunerative profit, by the diminished cost of carriage, although the effect may be to exclude from the lower rate those persons who cannot give such a guarantee.

Com. Bench Reps. vol. 5, p. 366.

(E. C. L. vol. 94, p. 366.)

*Pickford and another v. The Grand Junction Railway Company. July 7.*

The Grand Junction Railway Company were authorized by their act of Parliament, 3 and 4 W. 4, c. xxxiv, s. 156, to carry and convey upon the railway all such passengers, goods, merchandise, &c., as should be offered to them for that purpose, and to make such *reasonable charges* for such carriage and conveyance, as they might from time to time determine on. Section 159 also authorized the company to fix the sums to be charged in respect of small parcels, not exceeding 500 lbs weight each. By the 4 W. 4, c. iv. s. 19, they were empowered to carry passengers and goods on other railways, and to make such reasonable charges for such carriages as they should determine on. And by another act, the 3 Vict. c. xlix, s. 26, it was enacted that the charges by the former acts authorized to be made for the carriage of passengers or goods should be at all times charged *equally*, and after the same rate in respect of all passengers, goods, &c., conveyed or propelled by a like carriage or engine, passing on the same portion of the line, and under the same circumstances.

The company published a list of rates for the carriage of merchandise, divided into seven classes, of which the lowest was 16s. and the highest 60s. per ton; and for "boxes, bales, hampers, or other packages, when they contained parcels or other packages or things under 112 lbs. weight each, directed, consigned, or intended for different persons, or for more than one person," they imposed a charge of 1d. per lb. weight.

*Held*, that this last was not a *reasonable* charge in the case of a package above 500 lbs. weight, made up by a carrier and directed to one person, although containing a number of parcels under 112 lbs. weight each, consigned or directed to different persons.

The company also became carriers on the London and Birmingham line, and published a list of charges for the carriage of goods from Manchester to London, among which "Manchester packs" were charged 3s. 3d. per cwt., or 65s. per ton. At the foot of this list was a notice, that "goods were brought to the station at Camden Town without extra charge," and that there was "no charge for booking or delivery in London." The company made an agreement with C. & H. that the latter should carry from the station at Camden Town and deliver in London all such goods carried by the railway, and for so doing should receive 10s per ton out of the entire charge of 65s. per ton.

*Held*, that under these circumstances the charge of 65s. per ton, when made to any other persons, who were ready to receive their goods at the station at Camden Town, was both *unreasonable* and *unequal*.

Exchequer p. 399.

(Meeson's & Wellby's Reps. vol. 10, p. 399.)

*Crouch v. The Great Northern Railway Company. Feb. 2.*

The 14th section of the special act of the Great Northern Railway Company, 13 and 14 Vict. c. lxi., empowers the company to charge for the carriage of small parcels any sum which they may think fit. And by the 90th section of the Railway's Clauses Consolidation Act, 8 and 9 Vict. c. 20, which is incorporated in the special act, after reciting that it is expedient that the company should be enabled to vary the tolls upon the railway, so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favoring particular parties, &c., empowers the company to vary the tolls, provided that all such tolls be at all times charged equally to all persons, and after the same rate in respect of all passengers, and of all goods, &c., conveyed or propelled by a like carriage or engine. passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made, either directly or indirectly, in favor of or against any particular company or person traveling upon or using the railway.

*Held*, that the company were bound to charge the public alike; and, therefore, that the fact of a party using their line, being a common carrier, did not justify the company in charging him more than the rest of the public.

Wellsby, Hurlstone & Gordon, p. 556.

(Exchequer Repts. vol. 9, p. 556.)

*Branley v. The Southeastern Railway Company. May 12.*

The legality of a contract is determined by the *lex loci contractus*.

A railway company incorporated for the conveyance of passengers and goods from London to Folkestone under acts of Parliament, which prohibited them from making unequal charges, obtained another act enabling them to establish a communication by steam vessels with Boulogne, which last mentioned act contained no provision as to equality of rates for the carriage of goods. There was nothing in the law of France which disabled the company as public carriers, from making such contracts for that purpose as they might think most for their own interest. The company by their tariff rate charged certain rates for small parcels, with a double charge for "packed parcels."

*Held*, that so far as regarded the contract for the carriage of such parcels from *Boulogne to London*, there was nothing illegal in this increased charge.

C. B. Repts. N. S. vol. 12, p. 63.

(E. C. L. Repts., vol. 104, p. 63.)

*Parker v. The Great Western Railway Company. Nov. 14.*

2. By the 175th section of the 5 and 6 W. 4, c. cvii, it was enacted that the rates and tolls should be charged *equally*, and after the same rate per ton per mile in respect of the same articles, and that no reduction or advance in the said rates and tolls should, either directly or indirectly, be made partially or in favor of or against any particular person or company, &c., but that every such reduction or advance upon any particular kind or description of articles should take place throughout the whole of the railway upon and in respect of the same description of articles, and should extend to all persons using the same or carrying the same description of articles.

By the 50th section of the 7 and 8 Vict. c. iii, the company were empowered, whenever they should act as carriers, or should provide locomotive or steam power or carriages for the conveyance of passengers, goods, etc., to charge for such locomotive or steam power and carriages, such sums (not exceeding the sums limited by former acts), and that either per ton or per mile, or by bulk measure, number or admeasurement, or by fixed charges as they should think expedient; provided, that in whatever way the charges were made they should be made equally to all passengers and to all persons in respect of all goods, etc., and things of a like description and quality and conveyed in and propelled by a like carriage, or engine, passing only over the same portion of, and over the same distance, along the railway and *under the like circumstances*; and that no reduction or advance in any of such charges should be made partially, either directly or indirectly, in favor of or against any particular company or person. The company required carriers who brought goods to them for conveyance on the railway, to deliver with them a printed note,

filled up with the description, contents and weight of the several packages to be carried, *without which the company refused to receive them*. In consideration of this additional trouble the company formerly allowed the carriers a discount of ten per cent. on the sums paid by them for carriage.

*Held*, that the discontinuance of this charge did not constitute an equality of charge as between carriers and the rest of the public, so as to give the carrier a claim for money had and received, whatever other remedy he might have against the company.

C. B. Repts. vol. 11, p. 545.

(E. C. L. Repts. vol. 73, p. 545.)

*Edwards and another, assignees of Richard Parker, a bankrupt, v. The Great Western Railway Company. Nov. 15.*

1. The Great Western Railway Company, by its act of incorporation, 5 and 6 W. 4, c. cvii, was empowered to charge certain rates and tolls for the use of their railway and the carriage of passengers and goods thereon. By a subsequent act, 2 Vict. c. xxvii, s. 24, it was provided that those rates and tolls should be at all times charged *equally* to all persons, and after the same rate per mile, or per ton per mile, in respect of all passengers, and of all goods, &c., of a like description, and conveyed or propelled by a like carriage or engine, passing on the same portion of the line; and that no reduction or advance should be made, either directly or indirectly, in favor of or against any particular company or person traveling upon or using the same portion of the railway.

By the 7 and 8 Vict. c. iii. s. 48, the last mentioned provision was repealed, and in terms re-enacted by s. 49; and by s. 50 it was enacted that it should be lawful for the company, whenever they should act as carriers, or should provide power or carriages for the conveyance of passengers, goods, &c., to charge for such power and carriages such sum (not exceeding certain limits), and that either per ton, or per mile, or by bulk, measure, number, or admeasurement, or by fixed charges, as they should think expedient; provided, that in whatever way the charges were made, they should be made *equally* to all passengers, and to all persons, in respect of all goods, &c., of a like description and quality, and conveyed in or propelled by a like carriage or engine, passing only over the same portion of, and over the same distance along the railway, *and under the like circumstances*; and that no reduction or advance in any of such charges should be made partially, either directly or indirectly, in favor of or against any particular company or person.



*Held*, that the fact of the person sending the goods to be conveyed along the railway, being a *carrier*, did not constitute such a dissimilarity of circumstances, as to justify a difference of charge as between him and the rest of the public.

2. By the 171st section of the 5 and 6 W. 4, c. cvii, the company were authorized to fix the sum to be charged in respect of *small parcels*, (not exceeding 500 lbs. weight), as to them should seem proper; provided, that that provision should not extend to articles, matters, or things sent in *large aggregate quantities*, although made up of separate and distinct parcels, such as bags of sugar, coffee, &c., but only to *single parcels*, unconnected with *parcels of a like nature*, which might be sent upon the railway at the same time.

The company issued "scale bills," specifying in classes the charges to be made for carriages,—each class containing various kinds of goods; and at the end a "miscellaneous class," comprising goods "not being aggregate of one class or kind," for which a higher tonnage-rate was exacted, and also an additional charge of 2d. per package.

*Held*, that the company were not justified in charging under the "miscellaneous class" goods which were aggregate of several *kinds*, but all contained in one *class*.

3. *Held*, also, that the carrier who brought the goods to, and received them from the company at the end of the journey, was to be treated as the consignee, without reference to the ultimate destination of the goods.

4. *Held*, also, that the carrier was not entitled to any allowance in respect of assistance in the loading, unloading, or weighing, given by his men to the company, voluntarily, or for the carrier's own convenience.

5. The company being under an agreement with one Kent to make him an allowance of 10 per cent. upon the sums paid by him for carriage of goods, in consideration of services rendered by him, and having discontinued that allowance in consequence of a former decision of this court, Kent sued them for their breach of contract, and they

compromised that action and paid him £500 to cancel the agreement.

*Held*, that this did not constitute an inequality of charge as between Kent and other carriers.

6. The plaintiff having, *after* notice of action, served the company with a written demand of interest under the statute 3 and 4 W. 4, c. xlii, s. 28.

*Held*, that the arbitrator, under a submission of "all matters in difference," might award the plaintiff interest, notwithstanding the notice of action did not contain a demand of interest; and, further, that, assuming a notice of action to have been necessary, the want of such notice could not be taken advantage of, since the 5 and 6 Vict. c. xcvi, s. 3, unless pleaded specially.

C. B. Repts. vol. 11, p. 588.

(E. C. L. Repts. vol. 73, p. 588.)

*In the Matter of the Complaint of John Painter against The  
London, Brighton and South Coast Railway Company.  
June 9.*

A railway company granted exclusive permission to a limited number of fly-proprietors to ply for hire within their station:—The court refused to grant a writ of injunction against the company, under the Railway and Canal Traffic act, 1854, (17 and 18 Vict. c. 31), at the instance of a fly-proprietor who was excluded from participation in this advantage,—although it was sworn by the complainant and by several other fly-proprietors, who were likewise excluded, that occasional delay and inconvenience resulted to the public from the course pursued.

---

Lust moved for a writ of injunction against the London, Brighton and South Coast Railway Company, under the Railway and Canal Traffic act, 17 and 18 Vict. c. 31, s. 2, to restrain them from giving an undue preference to certain persons named, and imposing an undue and unreasonable prejudice on the complainant. Refused.

C. B. Repts. N. S. vol. 2, p. 702.

(E. C. L. vol. 89, p. 701.)

*In the Matter of the Complaint of Thomas Beadell v. The Eastern Counties Railway Company. June 1.*

A railway company agreed with a cab proprietor, in consideration of his paying them £600 per annum, to allow him the exclusive liberty of plying for hire within their station:— The court refused to grant a writ of injunction against the company under the Railway and Canal Traffic act, 1854, (17 and 18 Vict. c. 31), at the instance of another cab proprietor,—no inconvenience *to the public* being shown to have arisen from the arrangement.

C. B. Reports, N. S. vol. 2, p. 509.

(E. C. L. vol. 89, p. 509.)

*In re Jones and The Eastern Counties Railway Company.*  
*January 27.*

The court refused to grant a rule for an injunction against the Eastern Counties Railway Company, under the Railway Traffic Act, 1854, to compel them to issue season tickets between Colchester and London, on the same terms as they issued them between Harwich and London, upon a mere suggestion that the granting the latter (the distance being considerably greater) at a much lower rate than the former, was an undue and unreasonable preference of the inhabitants of Harwich over those of Colchester.

C. B. Repts. N. S. vol. 3, p. 718.

(E. C. L. vol. 91, p. 716.)

*In the Matter of Joseph Harris and another and The Cocker-mouth and Workington Railway Company. January 15.*

A railway company agreed with the lessees of certain collieries to carry their coals at a somewhat lower rate of tonnage than they carried for others, in consideration of the owner of those collieries having laid out a large sum in constructing tramways to connect them with the railway; they also made a further reduction, under the influence of a threat, that, unless they acceded to the terms proposed by the lessees, the owner would construct another line of railway direct from the collieries to the place of shipment, for the use of his tenants, and so would divert from the company a very considerable and essential portion of their traffic.

*Held*, that neither of these was a justifiable reason for the "undue preference" thus given.

C. B. Repts. N. S. vol. 3, p. 693.

(E. C. L. vol. 91, p. 692.)

*In the Matter of the Complaint of William Adolphus Marriott v. The London and Southwestern Railway Company. January 30.*

A railway company made arrangements, at one of their stations, with A., the proprietor of an omnibus running between the station and K., to provide omnibus accommodation for all passengers by any of their trains to and from K., and allowed A. the *exclusive privilege* of driving his vehicle into the station yard for the purpose of taking up and setting down passengers at the door of the booking office.

*Held*, that, in the absence of special circumstances showing it to be reasonable, the granting of such exclusive privilege to one proprietor, and refusing to grant the like facilities to another who also brought passengers from K. as well as from other places beyond, was a breach of the prohibition against the granting of undue and unreasonable preferences contained in the 17 and 18 Vict., c. 31, s. 2.

C. B. Reps. N. S. vol. 1, p. 499.

(E. C. L. vol. 87, p. 498).

*In the Matter of the Complaint of Frederick Ransome and John Bradly Geard against The Eastern Counties Railway Company. January 29.*

In dealing with the first branch of the 17 and 18 Vict., c. 31, s. 2, which prohibits railway companies from giving any undue or unreasonable preference or advantage to or in favor of any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage, the fair interests of the company are to be taken into the account.

A railway company made an agreement with A. to carry for him a large quantity of coals during three years from Peterborough to various places on their lines of railway, at certain rates.

B., a coal merchant at Ipswich, sent coals (which had been brought to that port by sea) to various places on the same lines of railway; and the company charged him a much larger sum per ton in proportion to the distance over which his coals were carried, than they charged to A., the professed object of the difference being to enable A. (whose coal came to Peterborough by railway) to compete in the coal trade of the district with B., who had the advantage of having his coals brought to Ipswich by sea.

*Held*, that this was giving an "undue preference" to A.

*Quære*, whether a railway company may not charge different rates, where coals are carried in large and small quantities, and where they are carried long and short distances, and where the difference is for the purpose of competing with another line, and where one party provides his own wagons and the other uses those of the company?

See *In re Oxlade*, post p. 454.

C. B. Reps. N. S. vol. 1, p. 437.

(E. C. L. vol. 87, p. 437).



*In the Matter of the Complaint of William Oxlade v. The North Eastern Railway Co. Jan. 30.*

Upon a motion for an injunction against a railway company under the 17 and 18 Vict. c. 31. enjoining them,—*first*, to carry upon their railway for the complainant such coal and coke as might be offered to them by him for that purpose; *secondly*, to charge for the carriage thereof respectively, tolls *not higher* than the tolls charged by them for carrying coal and coke to persons for whom the same coal and coke were also carried on another railway, forming a continuous line with theirs, and tolls not higher than the tolls charged by them to persons with whom they had private agreements for the carriage of coal or coke; *thirdly*, to provide for the complainant depots for depositing and receiving his coal and coke on the stations of the railway similar to those provided at such stations for persons with whom they had private agreements for the carriage of coals along their railway, and similar to those provided at such stations for persons who consigned their coal and coke to the company; *fourthly*, to afford to the complainant the same facilities for the receiving, forwarding and delivery of his coals and coke upon and from the railway, as the company afforded to persons who consigned their coal or coke to the company; *fifthly*, to provide for the complainant waggons, carriages and trucks for the conveyance and carriage of his coal and coke, and forwarding the same upon the railway; *sixthly*, to afford to the complainant all reasonable and proper facilities and accommodations for the unloading of his coals and coke at the various stations of the railway, and to afford to the complainant at the said stations the same facilities and accommodations for the unloading of his coals and coke as the company afforded to colliery owners, or lessees of collieries, or to any other

person, on cause being shown, it was referred to one of the masters to inquire and report upon the following questions:

“ *First*, whether any, and what accommodation and facilities were provided, or afforded at any, and what stations on the line of railway for the unloading of coal and coke, and for what persons and under what circumstances; *secondly*, whether the company carried coals or coke for persons other than the complainant, on any, and what terms different from the terms on which the company had carried, or had offered to carry, coals and coke for the complainant; *thirdly*, whether there was any, and what difference between the circumstances under which the company had so carried coals and coke for such other persons, and the circumstances under which the company had carried, or had offered to carry, coals and coke for the complainant; *fourthly*, whether, and in what manner, and how, the company were enabled by reason of such difference of circumstances, so to carry coals and coke for such other persons at a cost to the company less than the cost to the company of carrying coals and coke for the complainant.”

Upon the first point the master reported as to the accommodation afforded by the company for unloading coals and coke at their different stations, that they ascertained as nearly as possible the consumption in the neighborhood of each station, and the sort of coal required, and entered into terms with collieries having the particular description of coal, to supply the required quantity; that they appointed a depot agent to manage the sale of the coals so supplied, through whom the orders were transmitted to the colliery, and who accounted to the colliery owners for the proceeds; that all the depots were allotted to such agent; that all coal dealers were treated alike; and that this course was adopted by the company for the purpose of preventing any obstruction of the general traffic of the railway.

*Held*, disposing of the fourth and sixth branches of the rule,—that this was not giving an undue or unreasonable

preference or advantage to, or, in favor of any particular person or company, or subjecting any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage.

Upon the second point the master found that the company charged for *through rates*  $\frac{3}{4}$ d. per ton per mile for coal and coke going south, unless their wagons were used, in which case they charged one-eighth of a penny per ton per mile more for the first 100 miles, and one-sixteenth for any distance beyond, and 3s per day for demurrage on every wagon detained more than four days off the line; that there was no variation made in the charge to any one, except in the case of coals carried by the Northeastern Railway Company, in conjunction with the Great Northern Railway Company, through from the collieries to London, the Northeastern Railway Company's haulage ceasing at York, where their railway joined the Great Northern; such coal being made up into full trains, and the wagons for the entire distance being provided by the Great Northern Railway Company, for which the charge was  $\frac{1}{2}$ d. per ton per mile for the whole distance,—the circumstances of the coals so carried being carried in entire trains, and at regular times, and without stoppages, enabling the company to carry them at such lower rate.

*Held*, that it was sufficiently made out that the circumstances stated enabled the company to carry such coals at a cost less to them than the cost of carrying coals and coke for the complainant, and that by carrying them, under the circumstances stated, at such lower rate, no undue or unreasonable preference was given, or any undue and unreasonable disadvantage imposed.

The master also found that a similar arrangement was made with the Midland Railway Company, but not under the same circumstances, the inducement on the part of the company being a *desire to introduce the northern coke into Staffordshire*.

*Held*, that lowering their rates for that purpose was giving

an undue preference to that particular traffic,—there being no special circumstances affecting the pecuniary interests of the company to justify the course pursued.

As to the fifth branch of the rule (which was not referred to the master), viz, the complainant's demand to have wagons or trucks provided by the company for the carriage of his coal and coke—

*Held*, that the company were justified in refusing to furnish them, by the complainant's refusal to pay demurrage for the detention of the wagons beyond the time allowed by the regulations of the company.

*Held*, also, that the company could not be called upon to carry coals to the extremity of their line (where it joined the Midland Railway), and there shift them into other trucks or wagons, they having no convenience at that place for that purpose, and not affording such facility to any other person.

And, as to the first branch of the rule,

*Held*, that the company were not common carriers of coal. And the complainant having asked by the rule more than he was entitled to, and the company having been partially in the wrong, the court refused to allow costs to either.

C. B. Reps. N. S., vol. 1. p. 454.

(E. C. L., vol. 87, p. 453)

*Evershed v. The London and Northwestern Railway Company. Feb., '57.*

Railway Company—Undue Preference—Gratuitous Carting—Loading and Unloading of Customer's Goods, in order to prevent traffic from passing over other railway—Railways—Clauses—Consolidation Act, 1845 (8 and 9 Vict. c. 20), s. 90—Railway and Canal Traffic Act, 1854 (17 and 18 Vict. c. 31) s. 2.

The plaintiff was a brewer carrying on business at B., where the defendants, a railway company, and the M. Company, another railway company, had stations. Three firms of brewers also carried on business at B., and their premises respectively were connected with the M. Railway. The plaintiff's premises were not connected with the M. Railway. In order to prevent the traffic of three firms from passing wholly over the M. Railway, and to divert some portion of it to their own line, the defendants carted goods gratuitously between their station at B. and the premises of the three firms respectively, and they also allowed certain deductions from the rates charged to the three firms for the carriage of their goods, the effect of which was that their goods were loaded and unloaded by the defendants gratuitously. The defendants did not cart goods gratuitously for the plaintiff between his premises and their station, and they did not allow to him deductions similar to those allowed to the three firms. After carting the goods for the three firms gratuitously, and allowing them the deductions before mentioned, the defendants derived a profit from the traffic, and they had not any intention to prejudice the plaintiff:

*Held*, that the gratuitous carting, loading, and unloading of the goods for the three firms was an undue preference

granted to them by the defendants, and was in contravention of 8 and 9 Vict., c. 20, s. 90, and 17 and 18 Vict., c. 31, s. 2, and that the plaintiff was entitled to maintain an action to recover the amounts paid by him to the defendants which represented the cost of carting his goods between his premises and their station at B., and of loading and unloading the same.

L. R. Q. B. D. vol. 2, p. 254. 1876-77.

*Strick and Others v. The Swansea Canal Company. April 25.*

By a canal act, the company of proprietors were entitled to demand a fixed sum for goods carried upon any part of the canal, "which said respective rates should be equal throughout the whole length of the said intended canal." By a subsequent public act, 8 and 9 Vict., c. 28, proprietors of canals were empowered from time to time to alter or vary the tolls granted to them, "either upon the whole or for any particular portion or portions of such canals, according to local circumstances, or the quantity of traffic, or otherwise, as they should think fit," with a proviso that such tolls were to be charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, in respect of all boats, &c., of the like description passing along or using the same portion of the canal, and all goods, &c., of the like description conveyed or propelled in a like boat, &c., passing along or using *the same portion* of said canal, &c., *under the like circumstances, &c.* :

*Held*, that it was competent to the company to take a proportionably less toll per ton per mile for goods carried a given distance (five miles) along *any part* of the canal, than for goods carried less than that distance.

Also, that it was competent to the company to agree to carry at a lower rate for a particular individual, in consideration of a large guaranteed minimum toll, in order to enable them to enter into a successful competition with a rival line of railway.

C. B. R., N. S., vol. 16, p. 245.

(E. C. L., vol. 111, p. 243.)

## (HOUSE OF LORDS.)

<i>The Directors, &amp;c., of the London and North-Western Railway Company.....</i>	} <i>Appellants;</i>	H. L. (E) 1878
<i>and Sydney Evershed.....</i>		<i>July 5.</i>
		<i>Respondent.</i>

Railway—Inequality of Charges—Undue Preference—Toll—Money had and received.

The 90th section of the 8 and 9 Vict. c. 20 (*Railways Clauses Consolidation Act, 1845*), requires equality of tolls for similar services rendered by railway companies to all persons; and s. 2 of the 17 and 18 Vict. c. 31 (*Railway and Canal Traffic Act, 1854*), forbids the giving of any undue or unreasonable preference or advantage to any particular person or company. A charge made by a railway against A. for services rendered by that company to him must not therefore be greater than the charge made by the same company against B. for rendering him services of the like nature.

E. was a brewer at the town of B., where three railways had their stations. With one of these railways, M., a certain brewer in the town, had direct communication by sidings, which enabled goods to be sent to the trains, and taken from the trains of Railway M. with greater ease and less loss of time than by the way of ordinary cartage. M. charged them nothing for cartage, and made a rebate in the charge for station to station conveyance. These brewers had no such communications with Railway N. W., but it was often convenient for them to send by that railway; and the directors of that railway, in order to compete with Railway M., allowed these particular brewers the same advantages as to cartage and rebate as Railway M. did. As to all others in the same trade (E. among the rest) the



directors of Railway N. W. made the ordinary charge for cartage, and allowed no rebate on the charge for conveyance on the line.

*Held*, that this was an inequality and an undue preference within the meaning of the statutes.

Where E., one of the persons thus paying the higher rate, had for some time paid it in ignorance of the facts, but afterwards, on finding that he was subjected to this higher charge, paid it under protest—

*Held*, that he was entitled to recover back, in an action for money had and received, the difference he had so paid under protest.

Appeal Cases, vol. 3, p. 1029, 1877-78.



---

In re:

The Southern Railway and  
Steamship Association.

---

Argument of MILTON H. SMITH,

*On behalf of the Association for relief to the members  
of said Association, from the operation of the  
Fourth Section of the*

**“Act to Regulate Commerce.”**

---

Submitted April 2, 1887,

WASHINGTON, D. C.



*Mr. Chairman and Gentlemen of the Commission.:*

We appear before you as a committee representing the Southern Railway and Steamship Association.

The Southern Railway and Steamship Association is one of a number of similar organizations existing throughout the country that owe their origin to the rapid development of the transportation systems and methods that has taken place in this country during the past twenty years.

For nearly thirty years from the beginning of the construction of railroads in the United States little or no attempt was made at federation. Nearly all the railroads constructed during that period were local; and even where two or more companies constructed railroads that connected, and together formed a continuous line, they continued to be operated as local railroads, each company issuing bills of lading to points on its own line at local rates only, both freight and passengers being transferred at termini.

For many years forwarding and commission merchants continued to transact business in the same manner as when the transportation of the country was by water—that is, a shipment from an interior point in Ohio, say Springfield, destined to a point south, say Bowling Green, Ky., was shipped locally to Cincinnati, consigned to a forwarding and commission merchant, who received the same, paid the freight, transferred the shipment through the city, and delivered it to the Mail-line boats plying between Cincinnati and Louisville, shipped it to another forwarding and commission merchant at Louisville, who in turn receipted for the property, paid charges accruing thereon up to that

point, attended to the transfer to the depot of the Louisville and Nashville Railroad Company, and shipped the property to destination, collecting from the railroad company as advances the accrued charges, including a liberal compensation for receiving and forwarding, with a fair margin of profit in the item of drayage.

These conditions resulted in the formation of fast-freight line organizations by enterprising persons who saw the necessity for through arrangements, whereby shippers could forward property to distant points over the lines of a number of carriers under a contract for a through rate and continuous carriage. These fast-freight lines entered into agreements with the different carriers, whereby, in consideration of assuming the responsibilities of through contracts, through carriage, and furnishing through cars, they secured reduced rates of transportation on car-load quantities, occupying the position of middle men between the various carriers and the shippers. As this system developed, and the rates of transportation declined, the profits of the fast-freight lines were found to be excessive; and as it became apparent that the carriers could by combination furnish facilities nearly or quite equal to those of the fast-freight lines, complaint arose that such organizations were an unnecessary tax upon the revenue of the carriers. No such organization has ever existed in the territory served by the carriers—members of the Southern Railway and Steamship Association.

In time it became apparent that the carriers could eliminate some of the charges imposed upon traffic under the methods just described by agreeing to become parties to through arrangements, and, by one carrier receiving the property from the shipper and consigning it directly to a

connecting carrier to be carried to destination, or to be delivered to another connecting carrier, could perform the service theretofore performed by the forwarding and commission merchant or by the fast-freight lines. This could be done with little or no increased expense to the carrier, since the same facilities that were necessary for the carrier to do business with the forwarding and commission merchants could be used in receiving property from and delivering it to connecting carriers. Even after these methods were to some extent adopted, carriers in many instances, while guaranteeing through rates which were the sums of the locals, only receipted for property to the ends of their railroads, and still continued to transfer property from car to car, or by drays at termini, each company receiving its local rates.

This, for a time, created a class of middle-men, which may be correctly described as "freight brokers." They were generally enterprising men, who familiarized themselves with the rates of the various carriers, and by manipulating them were able to contract with shippers at lower rates than the shippers, without the special knowledge of rates, could secure for themselves. By reshipping at less rates they secured a margin that would remunerate them for their time and enterprise. As an illustration, a person such as we have described, located at Cincinnati, would contract with manufacturers in the interior of Ohio, guaranteeing a through rate from the manufactory to destination; have the property consigned to him at Cincinnati, pay charges, reship at rates he had secured, and collect from the carrier the difference between rates thus secured and the contract rate made between himself and the manufacturer. As the methods of the carrier rapidly improved, this class of middle-men soon became extinct.

As two or more carriers entered into arrangements for continuous carriage over their various railroads, the joint business rendered frequent communication and personal conferences necessary. This developed traffic agents, who devoted much or most of their time to what became known as "through traffic," in contradistinction to "local traffic," or traffic between stations on the line of a single carrier. As the system gradually extended, and the number of carriers parties to through arrangements increased, the necessity for some organization for the transaction of the joint business was developed, and this resulted in the formation of associations.

The Southern Railway and Steamship Association may be said to have come into existence in 1875, although it was the successor of similar organizations less comprehensive. The objects of the Association are partially set forth by the following extract from the preamble of the agreement submitted herewith :

"That whereas the establishment and maintenance of tariffs of uniform rates and the prevention of unjust discrimination, such as necessarily arises from the irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines, is important for the protection of the public ; and

"Whereas it is deemed to be to the mutual advantage of the public and the transportation companies that business in which they have a common interest should be so conducted as to secure a proper correlation of rates such as will protect the interest of competing markets without unjust discriminations in favor of or against any city or section ; and

"Whereas these objects can be attained only by co-operation on the part of the various transportation lines engaged



in the traffic of the territory south of the Potomac and Ohio rivers and east of the Mississippi river; and

“Whereas such co-operation is absolutely necessary to a strict compliance with the requirements of the act of Congress entitled ‘An Act to Regulate Commerce.’

“Now, therefore, in order to secure such co-operation among the said transportation lines, by providing means for the prompt adjustment of the differences which may arise between them; by placing all of their traffic, common to two or more companies, under the control of officers jointly elected, and by the general conduct of the same under well-defined rules and regulations which will insure the maintenance of rates, it is mutually agreed,” etc.

It will be seen that the agreement submitted herewith is to take effect on the 1st of April. It is, however, simply a modification of an agreement which has been in effect for several years, the principal change being the elimination of such portions as provided for the allotment or division of traffic which is specifically prohibited in section 5 of “An Act to Regulate Commerce.”

Most of the common carriers in the territory south of the Potomac and Ohio and east of the Mississippi rivers are parties to the agreement, the most important exception being the Chesapeake and Ohio Railway Company, which, though located south of the Ohio and Potomac rivers, takes traffic in competition with the trunk lines and their connections. The terms and conditions upon which it interchanges traffic with members of the Southern Railway and Steamship Association are similar to those upon which the trunk lines and their connections interchange traffic with them.

From the foregoing it will be seen that we represent the carriers that furnish transportation facilities for a large part

of the State of Virginia, practically all of North Carolina, South Carolina, Georgia, Alabama, and Tennessee, and a part of Kentucky, Mississippi, Louisiana, and Florida, and the traffic interchanged between those States and other parts of the country.

The results obtained by the Southern Railway and Steamship Association, like those of most other similar associations, are mainly the simplification of negotiations between the numerous parties to the arrangements for interchanging traffic. As will be seen by reading the agreement, the parties thereto delegate but little authority to the Association, and where this is done it is of small moment in practice, for the reason that such voluntary agreements, like those of nearly all similar commercial organizations, cannot be legally enforced, and are complied with only in so far as the representatives of the various corporations deem that the interests they represent will be promoted thereby, or as their personal whims or inclinations may dictate. These associations are of like nature with the various trade organizations, such as boards of trade, chambers of commerce, manufacturers' associations, and so on.

An examination of a map of the United States shows that the traffic conditions of the territory served by the carriers here represented differ materially from those of the larger portion of the remainder of the United States. Commencing at Cumberland, Md., thence down the Potomac and Chesapeake to the Atlantic, thence following the coast to New Orleans, and the Mississippi and Ohio rivers to Pittsburgh, Pa., the entire territory is practically surrounded by navigable waters. In addition to being thus surrounded the territory is penetrated by navigable rivers emptying into the ocean and the gulf, and

by the various tributaries of the Ohio and the Mississippi. There are numerous points that are competitive between rail and water carriers along and near the Atlantic coast. The James River is navigable to Richmond, Va. Boats ply the Savannah river with more or less regularity as far inward as Augusta, Ga. They ply the Chattahoochee as far as Columbus, Ga. The Alabama and its tributaries are navigable from Mobile to Montgomery, Ala., and to Aberdeen, Miss. The Tennessee is navigable from Paducah, Ky., to Florence, Ala., and from Decatur, Ala., to Chattanooga Tenn., and during certain seasons of the year above Chattanooga as far as Knoxville. The Government has for years been engaged in constructing a canal around Muscle Shoals. The work is nearly completed, and the Tennessee will soon be navigable between Paducah and Chattanooga. The Cumberland is navigable for a large portion of the year between Smithland, Ky., and Somerset, Ky., the crossing of the Cincinnati Southern railroad. The Green and Barren rivers are navigable between Evansville and Bowling Green. The Kentucky river is navigable between Carrollton; at its mouth, and Oregon, Ky. There are a number of smaller streams which are navigable for small craft during a portion of the year.

For many years the Government has been spending large sums of money to improve the navigability of these streams by building locks and dams, wing-dams, deepening channels, and erecting and maintaining lights and signals, thus cheapening the cost, lessening the risk, and otherwise increasing the facilities for navigating all the inland waters of this territory. Nearly or quite all of the carriers navigating these streams are engaged to a greater or less extent in interstate commerce.

The more important cities of this territory, such as Cincinnati, Ohio; Louisville, Ky.; St. Louis, Mo.; Nashville, Tenn.; Memphis, Tenn.; Montgomery, Ala.; Selma, Ala.; Mobile, Ala.; New Orleans, La.; Pensacola, Fla.; Savannah, Ga.; Charleston, S. C.; Augusta, Ga.; Wilmington, N. C.; Richmond, Va.; Vicksburg, Miss., were commercial centers, where traffic with the surrounding country was interchanged, before railroads were built to them. They became commercial centers by virtue of natural location and of the facilities they enjoyed; and do still enjoy, from water transportation. When the railroads reached these points they found the circumstances and conditions, by reason of meeting with water competition, entirely dissimilar, the volume of traffic concentrating at such points being many times greater than at intermediate stations, and the value of the transportation to the shipper already fixed by the water carriers.

As would be expected, the attempt to construct railroads throughout this territory started from points on existing water-transportation lines. Among the first to be built was the South Carolina railroad, Charleston to Augusta; soon after the road from Vicksburg to Jackson, Miss.; then from Savannah to Macon; Augusta to Atlanta; Atlanta to Chattanooga; Memphis to Chattanooga; Chattanooga to Nashville; Louisville to Nashville; Memphis in the direction of Louisville; New Orleans to Jackson, Miss.; Atlanta to West Point; West Point to Montgomery; Montgomery in the direction of Pensacola; Pensacola in the direction of Montgomery; Mobile northward; Dalton to Knoxville; Norfolk in the direction of Lynchburg, etc. As the railroads were constructed from water lines towards the interior, tariffs for the transporta-

tion of property were, at first, based mainly upon the distance. By this is not meant that in any case was the same rate per ton per mile basis adopted for the transportation of property for different distances, but that, as the distance increased, the rates were gradually increased. The long and short haul problem, which has for some years past vexed legislators and taxed the ingenuity of traffic managers, had not then arisen. In those days it was not supposed that railroads could, under any circumstances, compete with water transportation. Less than thirty years ago, some time after the completion of the several railroads which together form a continuous rail line from Nashville, Tenn., to Savannah, Ga., an enterprising young man, then and now a citizen of Tennessee, with a slight practical experience in river transportation, went to Savannah and presented to the president of the great Central Railroad of Georgia—a road 190 miles long—a plan to secure the transportation of wheat from Tennessee to New York via Savannah. The great magnate, while good-naturedly assenting to the proposed arrangement, bluntly said that he never expected to see or hear of him or the wheat again. He and the chief officers of the other railroads and the steamship lines over which the property was carried were greatly surprised when the effort resulted in what was then deemed a large movement of the product of Tennessee.

It was also about this time that the superintendent of the Western and Atlantic road, a road constructed, owned, and operated by the State of Georgia, in his annual report to the Governor, referred to the fact that during the preceding year, when there had been almost a total failure of the corn crop throughout the State, a large quantity of corn had

been transported from Tennessee, and had thus been the means of preventing much suffering and loss to the citizens of Georgia; offering this as a remarkable fact to prove the wisdom of the State in investing a large sum of money in what had before that proved to be an unprofitable enterprise.

The construction of railroads to interior points has greatly facilitated interchange of commodities between different sections of the country, and has added to the comfort and luxury of the people. Before the construction of railroads, communities located in the interior produced but comparatively few articles that would bear the excessive cost of transportation by the facilities then in use. Such articles as wool and feathers, of which the relative value as compared with weight is great, would bear transportation for quite long distances to the nearest point favored with water transportation. Corn and such like articles could only be disposed of for consumption in the neighborhood, or be converted into a product that would increase its value as compared with its bulk and weight, such as whiskey, live stock, etc. The quantity of merchandise used in such communities was also greatly restricted by the cost of transportation. The result was that these communities lived mainly within themselves—that is, they produced much of what they consumed and consumed most of what they produced.

When railroad companies began to extend their lines into the interior, their rates of transportation were adjusted within their charter limits to meet the existing condition of things. For the first few miles they were unable to compete with the transportation by animal power. But as lines were extended the limits prescribed by charters produced rates that were

less than the cost of animal transportation. And as lines were still farther extended it became evident that the maximum charter rates, if insisted upon, would prohibit the transportation of some articles. In other words, rates so fixed were more than the traffic would bear. If the rate on corn was made as great as the rate on wheat the corn could not be shipped, and was therefore converted by feeding to stock or by manufacturing whiskey. The natural consequence was that to encourage the shipment of corn the rate was reduced. In the same way the limit of the rate for the transportation of wheat was reached. So in the case of other articles of which the value as compared with the bulk and weight is relatively small. Thus railroad managers learned their first lesson in promoting traffic. Many articles the value of which as compared with the bulk is relatively great, such as dry-goods, boots and shoes, drugs, etc., have seldom or never been charged what such traffic will bear.

From the limitations herein described managers of railroads first discovered the fact which involves a paradox—that traffic can be transported and yield a profit at a rate that is less than the average cost: that *additional* traffic secured at a rate that yields revenue in excess of the *additional cost* of carriage, though less than the average cost, produces a profit.

I have said that managers learned this, and it is true, so far as adopting in practice rates so based; although, with a few exceptions, it is too much to say that they clearly comprehended the fact. Many of them still do not so clearly comprehend it as to enable them to make an intelligent explanation of it. Only when rail lines undertook to compete with water lines was this important economic fact extensively put in practice.

As the railroads starting from opposite points on the water-bound territory were extended into the interior, the adoption of rates of transportation that were not less for the longer than for the shorter distance resulted in an increase in the rates of transportation. One line starting from Charleston and extending in the direction of Memphis, and another starting from Memphis and extending via Chattanooga in the direction of Charleston, the maximum rates from the basing points, Charleston and Memphis, were reached at the meeting point, say, somewhere in the State of Georgia. This basis of adjusting rates was and is still beyond criticism so long as the principle obtains that the rate for the longer distance shall not, under any circumstances, be less than for the shorter distance, and it was acquiesced in by all concerned until the various railroads entered into the arrangements heretofore referred to, whereby they undertook to contract for continuous carriage between distant points, over a number of railroads, at a specific rate, and to compete with water carriers.

When railroads undertook to transport property from Charleston to Memphis it was found that it could be done only under limitations not theretofore encountered; that the compensation for transporting property was limited to its value to the owner, and that the value was not in this case what the traffic could bear, but what competing carriers would transport it for.

Evidently, at this stage, the net revenue derived from the transportation of property to and from intermediate points, was many times greater than could possibly be obtained for the transportation of like property between Charleston and Memphis. Therefore the interests of the carrier demanded



that the transportation of property between Charleston and Memphis be not undertaken, or that a less rate for the longer than for the shorter distance should be accepted. This principle also had to be applied to a certain extent to a limited number of intermediate points. The maximum rate that could be secured for the transportation of property from Charleston to intermediate local stations near Memphis was limited to the value of transportation from Charleston to Memphis plus the rate from Memphis to those stations, which, on many classes of freight, would be less than to stations a greater distance from Memphis. From such conditions was evolved the basis upon which rates for the transportation of property in the territory represented are, with few exceptions, now fixed.

For the Louisville and Nashville Railroad Company I claim that the present rates for the transportation of property are not only just and reasonable, but are adjusted, with possible exceptions, in accordance with the requirements of the "Act to Regulate Commerce."

I believe that the "Act to Regulate Commerce," in prohibiting carriers from charging or receiving "any greater compensation, in the aggregate, for the transportation of passengers, or of like kind of property, *under substantially similar circumstances and conditions*, for a shorter than for a longer distance," authorizes, carriers to charge or receive greater compensation for the transportation of passengers or of like kind of property for a shorter than for a longer distance, under circumstances and conditions that are substantially *dissimilar*, and that your Commission can only authorize carriers to charge less for longer than for shorter distances, for the transportation of passengers or of like kind of property

upon application of carriers who may desire so to do, where the circumstances and conditions are substantially similar.

Other representatives of large corporations who are associated with me in this committee hold similar views. Our views are more clearly stated by Mr. Albert Fink, from whom I take the liberty to quote:

*"Section Four.*

"I shall first deal with section four, regulating the charges for long and short hauls. While sections 1, 2, and 3 lay down the general principles upon which tariffs are to be established, section 4 is the only one in which it is attempted to lay down a specific rule; but it is so indefinite that it admits of different constructions. The first part of this section reads as follows, omitting the clause 'under substantially similar circumstances and conditions:'

" 'That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance.'

"There could be no misconstruction put upon this part of the section, as it is an absolute prohibition of charging more for a shorter than for a longer distance; but, by introducing the clause 'under substantially similar circumstances and conditions,' this prohibition is qualified, and it may be lawful under dissimilar circumstances and dissimilar conditions to charge more for a shorter than for a longer distance. The law does not specify what circumstances and conditions would justify a greater charge for a shorter than for a longer haul, and we must, therefore, inquire what are the different circumstances and conditions referred to which justify an exception to the general rule.

“ These circumstances and conditions must necessarily be such as to legitimately influence the relative charges for long and short hauls. The law cannot mean any other circumstances and conditions. It cannot refer to extraneous matters, as, for example, to the conditions of the weather, whether it rains or snows, or whether it is hot or cold but it must refer to the conditions and circumstances which, from the very nature of the case, control transportation charges; and the principal elements that control transportation charges are the cost of the service and competition, using the word ‘ competition ’ in its widest sense—competition with water routes, competition with rail routes, competition between markets, &c. These are the main factors regulating transportation charges, and have done so at all times, in this and all other countries. It must, therefore, be these conditions and circumstances to which reference is had in this clause.

“ If it can be shown, for example, that it costs a railroad more to carry freight for fifty miles over its road than it costs to carry the same kind and quantity of freight one hundred miles, this clause would be an authorization for charging more for the fifty-mile service than for the one-hundred-mile service; or, if it can be shown that the rate to the end of the one hundred miles of road is fixed by water transportation, hardly sufficient to pay the railroad the cost of doing the work, without any or without an average profit in the capital invested in the road, the railroad company would be justified in making a lower rate to the station one hundred miles distant than it does to the station fifty miles distant, provided, however, that the rate to the fifty-mile station is reasonable in itself—not as low as the cost of water transportation would be, but not higher than the cost of railroad operation and a reasonable interest on the cost of the road. The shippers at the one-hundred-mile station enjoy the natural advantages of their location on a navigable river, while those who live in the interior are neces-

sarily under disadvantages. This discrimination exists in the nature of things; it is not unjust; it is not the result of the arbitrary action of the railroad transportation companies, who are compelled to regulate their charges in accordance with the circumstances and conditions of the situation as they find them. The railroad company would prefer not to make the lower charge for the long haul, but to assess the people along the line of the road ratably, according to the distance which freight is carried; but this is rendered impossible by the very nature of the case when railroads compete with water routes, because of the cheaper cost of transportation by water than by rail.

"In all cases, therefore, where the cost of the service and legitimate competition justify a higher charge for a shorter haul than for a longer, section 4 does not prohibit it; but the charge for a short haul must, of course, come within the restriction laid down in section 1, viz., it must be reasonable and just.

"Assuming that this interpretation of the first clause of section 4, down to the proviso, is correct, the question will be asked, what meaning is to be attached to the proviso, which reads:

"*Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may, from time to time, prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

"In order to properly interpret the meaning of the proviso, which does not seem quite in harmony with the first part of the section, it is necessary to bear in mind that the original bill as reported by the Senate committee to the Senate did not contain in the first part of the fourth section

the qualifying clause 'under substantially similar circumstances and conditions.' It made the prohibition of charging more for a short haul than for a long haul absolute; but it is obvious that the enforcement of such a rule would result in great injury to the commerce of the country. Discretion was, therefore, given to the Commission, in the proviso, to suspend its operation; but it is evident that, after the qualifying clause 'under substantially similar circumstances and conditions' had been inserted by the Senate in section 4, there was no longer any necessity for the proviso, as no further exemption is needed from the operation of the first part of the section as amended by the Senate. Bearing this in mind, and reading the proviso in connection with the first part of the section, it can only mean that in cases where the circumstances and conditions are *similar* the Commission may relieve the carriers from the operation of the rule when application for such relief is made. Should no such application be made the Commission have no cause for action under the proviso.

"The qualifying clause in the fourth section 'under substantially similar circumstances and conditions,' therefore, leaves the determination of whether a greater charge can justly be made for a shorter haul than for a longer under different circumstances and conditions to the judgment of the carriers in the first place to be finally passed upon by the courts. Section 4, therefore, does not prescribe a more definite rule than section 1, by which the carriers could be guided in determining in all cases what are reasonable and just charges. That section might, therefore, have been omitted altogether, as it conveys no other meaning than that which is already expressed in section 1, viz., that the railroad charges shall be reasonable and just.

"There can be no doubt that the above is the correct interpretation of section 4; it fully carries out the intent and object of the law. If the long and short haul rule had been made absolute it is obvious that the very object of the law

could not have been attained ; instead of regulating commerce the law would have obstructed it ; instead of preventing unjust discrimination it would have created it ; it would have stifled competition with water lines and increased the transportation rates ; it would have deprived the people of facilities to ship to distant markets. These evils could not have been prevented by the exercise of the Commission's power to exempt the carrier from the operation of the long and short haul rule, because it would have been an impossible task for the Commission to investigate and decide the numerous cases that would come before them. The Commission could not exempt any one railroad or line from the operation of the long and short haul rule without at the same time giving relief to all the other railroads whose tariffs are affected thereby ; otherwise great injustice would be done both to the railroads and to business communities. It certainly was not the intention of the law to throw the transportation business of the whole country into confusion, which would be the result if section 4 were interpreted to make the long and short haul rule absolute and only subject to suspension by the Commission.

“ In case of a doubt as to the proper construction and meaning of the law, it must be construed by the carriers in accordance with the avowed and clearly expressed purpose of the law, and not in opposition to it ; otherwise the carriers would lay themselves open to the imputation that they did so for the purpose of making the law obnoxious. Between the two alternatives—either to fail to construe the law as it may finally be construed by the courts, or to construe it in a way that would avoid this risk but result in the obstruction of commerce—the right course to pursue it seems to me would be to construe it with a view to carrying out the object and intent of the law, trusting that such construction will finally be sustained by the courts.”

Personally I am confident that the foregoing is the correct interpretation of the fourth section of the act, and that it will be finally so decided.

It is not necessary for me to call your attention to the fact that if your Commission should so construe the law it would not only give instant relief to the commerce of the country, which, owing to the unwise, unjustifiable, and, under the circumstances, indefensible construction of section four of the act by the managers of a large proportion of the railroads throughout the country, is practically suspended; but you would relieve yourselves of innumerable complications and of great responsibilities that, in my opinion, you are not called upon to assume. Under the "Act to Regulate Commerce," as representing common carriers, we are not authorized to bring any matter to the attention of your Commission except to ask authority to charge less for the longer than for the shorter distance for the transportation of property under substantially similar circumstances and conditions. We are, therefore, debarred from applying to you for your construction of the fourth section of the act, and possibly we are not justified under the circumstances in bringing the matter to your attention.

Others, also representing large corporations, hold opposite views, construing the act to absolutely prohibit "any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of property \* . \* for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance," under any and all conditions, unless specially authorized by your Commission.

While I, as representing the Louisville and Nashville Railroad Company, firmly believe that the act does not require the abandonment of the present basis of adjusting rates for the transportation of property throughout the territory now under consideration, which has been in effect for years, and upon which the business in this territory and with other parts of the country is based, and which may be said to have given general satisfaction, and which has constantly furnished increased facilities at a constantly decreasing cost to the various communities, yet I am practically forced, by what I deem the unwise and unwarranted action of connecting carriers, to adopt the same course as those holding opposite views.

I have been connected with Southern railroads since 1860. For twenty years I have been engaged in formulating the system whereby through rates for the transportation of property were made between points on the Louisville and Nashville railroad and all parts of the country. It has been a source of pride with me that shippers of nearly all classes of property could secure through bills of lading between any point on the Louisville and Nashville railroad and nearly every point in the United States, and on some classes of freight to some points in Europe. Many years ago, after much labor, I succeeded in securing data that enabled the Louisville and Nashville Railroad Company to guarantee the rates on cotton from all points on or reached via its lines to nearly every cotton mill in New York, New England, and Canada. Every transportation line in the Southern territory has for years past been guaranteeing rates in the same way.

This is a business matter and does not call for any exhi-



bition of feeling, yet I confess to a feeling of discouragement and annoyance when I see the labor of years thrust aside, as it has been, by connecting carriers withdrawing all rates for the interchange of traffic. I contend that connecting carriers were not justified in taking such action.

We are aware that the trunk lines and most of their Western connections have prepared and put in effect an adjustment of rates from the first of April, based on not charging less for the longer than for the shorter distance. Managers of railroads are human, and in this instance they have been prompted to take uniform action from different motives. Many of them believe that a strict construction of the law in this regard will on the whole promote the interests they represent. Others are in fear of a multiplicity of lawsuits with corresponding penalties. Others are compelled to do so by the action of competing lines. Others, comparatively few it is to be hoped, believe such a construction will seriously cripple competing lines without greatly injuring the interests they represent. This is an uncharitable view, but there is evidence going to show that long and continued strife for traffic engenders a feeling of animosity in some characters that causes the individual to lose sight of nearly everything except that that will injure a rival corporation.

However, the competitive conditions north of the Ohio and Potomac rivers are wholly different from those in the territory represented by your petitioners.

The practice of adjusting rates so as to not charge more for the longer than for the shorter distance has been in effect upon the trunk lines for many years. The New York Central Railroad, paralleling the Hudson River, the Erie

Canal, and with its connections west of Buffalo the lakes, has water competition the whole length of its line. Evidently these carriers could not well exact a higher rate for the shorter than for the longer distance, because the competitive circumstances and conditions are substantially similar at most if not all the points on the entire line. A higher rate from Toledo or from Sandusky, or from Cleveland, to the seaboard, than from Chicago to the seaboard, could not well be charged, as the value of the transportation, or the charge by the water lines, is not greater for the shorter than for the longer distance. The Pennsylvania Railroad Company adopted this basis at least twenty-five years ago, and its action forced competing lines to the same course. Therefore, revising the rates of these lines to adjust them in accordance with the prohibition against charging more for the shorter than for the longer distance involves little or no change, so far as their lines and immediate connections are concerned. It will be readily seen that a corporation like the Pennsylvania Railroad Company, operating nearly five thousand miles of railroad in the State of Pennsylvania, the distance from the nearest seaboard point to the extreme western limit of the State being not less than 350 miles, and over which nearly all traffic from the West must pass, can with its immense traffic afford to adopt a basis, that secures to it the long haul upon nearly all competitive traffic. But when small independent companies with short roads and light traffic are forced to adopt the same basis the result must necessarily be disastrous.

A retrospective view proves this to have been the result in many cases. I venture to say that, with but one or two exceptions, not a railroad in the States of Ohio, Indiana,

or Illinois has been able to escape bankruptcy, except it has been carried by or become part of one of the trunk lines, or some great Western railroad corporation. Several of these small railroads have been through bankruptcy more than once.

The annual reports of the Pennsylvania Railroad Company for a number of years showed that the operations of the roads west of Pittsburgh and Erie controlled by that corporation resulted in a loss; while the traffic secured from those roads to the lines east of Pittsburgh and Erie, may have, and doubtless did, yield a revenue that has rendered the operation of those roads as a whole, profitable to that corporation.

What is known as the Bee Line, running from Cleveland to Columbus, Cincinnati, Indianapolis, and St. Louis, which was forced by its competitors to adopt the policy of the trunk lines, although running through a magnificent and thickly-populated country, yielding an immense traffic, has, because debarred from securing local rates upon any of its traffic, avoided bankruptcy with the greatest difficulty, and it is to-day struggling to meet a large debt. The average rate per ton per mile received by that company for the transportation of property has been less than that of any other railroad in the country—less than that of any of the trunk lines who have so selfishly thrust this policy upon their Western connections, and by so doing have inflicted losses amounting to millions of dollars upon the original investors in Western railroads. The control of this road is believed to be held by the interests that control the New York Central. Very likely, the interest which may have been acquired at a price less than it

cost the original investors, is indirectly remunerative; since by the adjustment of rates the traffic originating at stations on this line, which ought in justice to yield a local revenue to the C. C. C. & I. Co. is secured to the controlling line. This adjustment of rates amounts to a practical prohibition against the movement of all articles produced at intermediate stations on the east and west lines to the south. From the foregoing, I think, it will be seen how the policy of adjusting rates so that the charge for a longer distance to and from competitive points shall in no case be less than to and from intermediate local stations, may promote the interests of the great trunk lines, and at the same time be disastrous to the interests of the smaller corporations; and how such a policy may tend to concentrate the commerce of the country at eastern seaboard cities, while at the same time it has a tendency to retard the prosperity of the West and the South.

As representing the Louisville and Nashville Railroad Company, I can speak with confidence as to the disastrous results from the enforced adjustment of rates upon the basis of not less for the longer than for the shorter distance. The Louisville and Nashville Railroad Company is the owner of a railroad extending across the State of Illinois from East St. Louis, Ill., to Evansville, Ind., with a branch from McLeansboro to Shawneetown, Ill. This property was acquired by purchase at a bankrupt sale. During the fiscal year ending June, 1886, the results on this railroad were as follows:

Gross earnings.....	\$837,104 71
Operating expenses, interest, and taxes.....	1,019,517 08
Loss.....	<u>\$182,412 37</u>

This result is wholly due to the low rates which circumstances and conditions compel the management to accept for the transportation of local traffic, such rates being partly due to the action of competing lines in adjusting rates, as hereinbefore described, and partly due to the regulation of rates by the State of Illinois through its railroad commission, which absolutely prohibits charging or receiving less for the longer than for the shorter distance under any circumstances. As an illustration of the ill effects of the prohibition by the State of Illinois, the railroad company makes no attempt to compete with the water lines for the transportation of property between Shawneetown, Ill. and East St. Louis and St. Louis. Consequently, the traffic over forty miles of railroad, from Shawneetown to McLeansboro', is so light that one mixed passenger and freight train each way, six days in the week, is all that is operated, and is really more than the traffic requires. Were the restrictions against charging more for the shorter than for the longer distance removed it is probable that a traffic in lumber and other heavy articles might be developed that would enable the company to furnish increased facilities and add something to the net earnings.

Fortunately, perhaps, the earnings of the Southern roads from local traffic are so many times greater than from competitive traffic, and the competitive points are so widely separated, that the effort of the trunk lines and their Western connections to force their adjustment of rates upon the Southern roads must necessarily fail.

I do not believe there is any necessity for disturbing the commerce of that portion of the country at least which lies south of the Ohio and Potomac rivers and east of the Mis-

Mississippi. I do believe that the law was enacted to secure just and reasonable rates and to prevent unjust discrimination. I do not believe that it was intended to disturb the existing friendly and mutually favorable and just commercial conditions that exist between the carriers and the shippers, or that it was intended to financially embarrass either carriers or commercial communities; and I do not believe that it will so result, if the carriers of the country intelligently construe its provisions and make an earnest and honest endeavor to comply therewith. If they do this I believe they will receive the support of your Commission and of the courts. If any of the requirements of the act are of doubtful meaning no action should be taken until the meaning is made clear, avoiding sudden and radical changes which tend to disturb the commerce of the country.

Ours is not a despotic Government. If our legislators under our cumbersome methods of legislation, in endeavoring to legislate upon a wholly new subject—for I believe this is the first attempt of Congress to legislate on this subject—have enacted a law which is evidently a piece of patchwork, incoherent in its terms, and subject to different interpretations, and providing for its becoming effective simultaneously with the time when your Commission, created to administer it, is authorized to act, the carriers were not justified in placing an illiberal construction upon it, and arbitrarily taking action that creates a disturbance in the commerce of the country and threatens a general commercial disaster. Assuredly there is not, and there never has been, any danger of carriers being punished for violating a law whose provisions are not clearly understood. They will not be punished except they wilfully violate the law after its provisions have been construed by the proper authorities.

As heretofore stated, the views of some of the members of this committee do not coincide with mine; but for the reasons given we are all agreed upon the necessity of asking your Commission to exercise the authority delegated to you by section 4 of the act, in that we "be authorized to charge less for longer than for shorter distances for the transportation of \* \* \* property."

For convenience, to lighten the labor, and to facilitate progress, we will divide the questions to be submitted into six classes.

First. That we "be authorized to charge less for longer than for shorter distances for the transportation of \* \* \* property" where the property transported between the longer distances is secured in competition with the water carriers not subject to the provisions of the act.

There are many instances of this class of competition. It exists between Boston, New York, Philadelphia, Baltimore, and Richmond, Wilmington, Savannah, Mobile, New Orleans, Montgomery, Selma, Memphis, etc. Between Louisville and Cincinnati, between Cincinnati, Louisville, and Owensboro, Ky.; Evansville, Ind.; Memphis, Tenn.; New Orleans, La.; Mobile, Ala.; Montgomery, Ala.; Selma, Ala., etc.

Second. That we "be authorized to charge less for longer than for shorter distances for the transportation of \* \* \* property" where the traffic for the longer distance is taken in competition between rail lines and rail and water lines which may or may not be subject to the provisions of the act.

There are numerous instances of this kind of competition.

For example, between Baltimore and Richmond; New York and Nashville, Tenn.; Memphis, Tenn.; Montgomery, Ala.; Selma, Ala.; between St. Louis and Nashville, Tenn.; Montgomery, Ala.; Selma, Ala.; Atlanta, Ga., etc.

Third. That we "be authorized to charge less for longer than for shorter distances for the transportation of \* \* \* property" where the property moved between the more distant points is taken in competition between rail and water lines and rail and water lines subject to the provisions of the act.

Instances of this kind of competition are shown in the case of traffic between eastern cities and Atlanta, Ga.; Macon, Ga.; Augusta, Ga.; Chattanooga, Tenn., etc.

Fourth. That we "be authorized to charge less for longer than for shorter distances for the transportation of \* \* \* property" when the property moved between the more distant points is taken in competition between rail lines and rail lines.

This class of competition occurs in the case of traffic between Cincinnati, Ohio, and Chattanooga, Tenn.; between Louisville, Ky., and Chattanooga, Tenn.; Atlanta, Ga.; Montgomery, Ala., etc.

Fifth. That we "be authorized to charge less for longer than for shorter distances for the transportation of \* \* \* property" when the property is moved between competitive points connected only by a single direct rail line; the rates between such competitive points being fixed or controlled by competition of other carriers competing for the traffic between one of the points and other points, or between other points and other points.



Sixth. That we "be authorized to charge less for longer than for shorter distances for the transportation of \* \* \* property" when the property is moved to and from points "under circumstances and conditions" which are believed to be "substantially similar."

While the six classes described do not embrace all the different conditions of competition, and while the different classes shade or blend into one another, still it is believed that your decision upon one case in each class will practically be a decision upon the larger portion of the applications which the carriers, members of this Association, may submit for your decision in the future.

First. Application is hereby made to charge less for the transportation of property between Louisville, Ky., and Memphis, Tenn., than for shorter distances on the same line, to the extent that the rail carriers may be enabled to adjust their rates of transportation so as to enable them to successfully compete with water carriers between the same points, without making any reduction from present rates to and from or between intermediate local stations.

The roads now forming the Louisville and Memphis line of the Louisville and Nashville Railroad Company were not primarily constructed with a view of competing for through traffic. As the Louisville and Nashville railroad was extended from Louisville in a southerly direction, traffic shipped from Memphis destined to points like Elizabethtown, Ky., were shipped to Louisville, by water, thence to destination by rail, the aggregate charge being that to Louisville plus the rate from Louisville to destination. Property shipped from Louisville, Ky., to Brownsville, Tenn., was

shipped to Memphis by water, thence to Brownsville by rail, the aggregate charge being that to Memphis plus the rate from Memphis to destination.

When the rail line was completed rates of transportation by the rail line from Memphis to Elizabethtown were materially reduced and the facilities and character of service greatly improved. The same is true in the case of Louisville, Ky., and Brownsville, Tenn. Yet the rates received were in excess of the charges by the water carriers for the transportation of like kind of property between Louisville, Ky., and Memphis, Tenn.

Your attention is invited to the following comparative table, showing tonnage, ton miles, revenue, and rate per ton per mile received for the transportation of property to and from local stations between Louisville and Memphis; and tons, ton miles, revenue, and rate per ton per mile received for the transportation of property passing between Louisville and Memphis, and the total tons, ton miles, revenue, and average rate per ton per mile received from local and competitive traffic on the line between Louisville and Memphis for the fiscal year ending June, 1886 :

Traffic.	Tons.	Ton miles.	Revenue.	Rate per ton per mile.	Percentage.
Local - - - - -	518,949	47,037,878	\$767,155.93	1.6306c.	89.1
Competitive -	26,595	10,026,315	94,669.27	.9940	10.9
Total - - -	545,544	57,064,193	861,825.20	1.6153	100

NOTE—Only one-half of the traffic passing between stations on main stem from Memphis to Louisville is included.

The cost to the Louisville and Nashville Railroad Company of its road between Memphis Junction and Memphis and one-half the cost of the road between Memphis Junction and Louisville, with average equipment, has been \$16,500,000, on which the interest charge, at six per cent. per annum, is \$990,000. The earnings from local and through traffic over that portion of the line between Memphis Junction and Memphis added to the earnings derived from transportation of traffic passing between Louisville and Memphis added to one-half the earnings from the transportation of traffic between stations, Louisville to Memphis Junction included, have not in any year been sufficient to pay operating expenses and the interest charge. This is conclusive evidence that the charges are not unjust nor unreasonable.

It only requires a glance at the foregoing figures to show that, if the company is to choose between reducing the rates for transportation of property to, from, and between intermediate stations so that the charge shall not in any case exceed that received for the transportation of property between Louisville and Memphis and abandoning the competitive traffic, it will, in justice to all parties, choose the latter. Financial embarrassments might and probably would result to the company from the adoption of either course. Nevertheless, it would plainly be the duty of the management to choose the course that would involve much the smaller loss, and endeavor, by reducing facilities and expenses, to avoid bankruptcy.

Second. Application is hereby made for authority to charge less for the transportation of property between New

York and Nashville, Tenn., than for shorter distances to the extent that the rail and water carriers may be enabled to adjust their rates so as to successfully compete with the rates established by the all-rail lines, without making any reduction in present rates to and from or between intermediate points.

In this instance the maximum rate that can be charged from New York to Nashville is the rate from New York to Louisville plus the rate from Louisville to Nashville.

We have here the paradox of water and rail lines asking for authority to make the same relative rates between the points named as are made by the all-rail lines, the rates by the all-rail lines being fixed by water competition. By an arrangement that has been in effect for many years the rates from New York to Louisville are made relative to the rates from New York to Chicago, the rates between the two last-named points being fixed during a large portion of the year by the rates charged by the canal and lake and the rail and lake carriers. The rate from Louisville to Nashville is fixed by competition with the river carriers between those points.

Practically, therefore, the rail line, New York to Nashville, becomes the shorter line, or the line by which the rates between the two points are fixed. It follows that the competing ocean and rail lines via Norfolk, Savannah, Charleston, etc., must make corresponding rates if they are to compete for the traffic. Again, it has been the custom to make the rates from New York to Nashville relative to the rates from New York to Memphis. The rates between the two last-named points, on many classes of freight, are fixed by competition of the water line and the rail and water lines from New York via New Orleans to Memphis. The rate

from New York to Murfreesboro', Wartrace, Shelbyville, and other stations between Nashville and Chattanooga are made by adding to the rate from New York to Nashville the rate from Nashville to those stations. The rates from New York and other Eastern cities to Nashville, fixed as hereinbefore described, are upon a much lower basis than the Southern lines, members of this Association, can afford to adopt between intermediate points. The territory served by the lines in this Association, as compared with that served by the trunk lines north of the Ohio river, is much more thinly inhabited, and relatively the tonnage moved is much less.

Third. Application is hereby made for authority to charge less for the transportation of property between New York and Macon, Ga., than for shorter distances.

The maximum rates that can be secured for the transportation of property from New York to Macon are made by adding to the steamer rate from New York to Savannah the rail rate from Savannah to Macon. Practically this becomes the short line, or the line that fixes the rate.

There are two lines competing for the traffice via Savannah, viz., the steamships and the Central railroad of Georgia, and the steamships and the Savannah, Florida and Western, and the East Tennessee, Virginia, and Georgia roads via Jessup.

There are several lines via other routes competing for the traffic between the same points, viz., the line via Brunswick, the line via Charleston, the line via Port Royal, the Coast Line via Norfolk, the East Tennessee, Virginia and Georgia

via Norfolk, and the Richmond and Danville road via West Point.

All these lines compete for traffic from New York to Chattanooga, Atlanta, and all points between Chattanooga and Macon. As rates are at present adjusted, the rates from New York via Savannah to all points north of Macon are greater than to Macon. It will at once be seen that unless authority be given to the lines approaching Macon from the North to accept less rates on shipments from New York to Macon than to intermediate points, those lines will be prevented from competing for shipments to Macon, though a point on their own lines. On the other hand, unless authority be given to the lines working via Savannah and Brunswick, and approaching Macon from the south, to accept less for the longer than for the shorter distance, they will be prohibited from competing for traffic to points on their own lines north of Macon.

Fourth. Application is hereby made for authority to charge less for the transportation of property between Cincinnati, Ohio, and Chattanooga, Tenn., than for shorter distances on the same line.

The rates from Cincinnati to Chattanooga are nominally made by competition between two rail lines, to wit, the Cincinnati Southern railway, 336 miles, and the Louisville and Nashville railroad, 446 miles. In practice the rates are made relative to rates from other points to Chattanooga, and relative to rates from Cincinnati and other points to other competitive points south of Chattanooga and the Memphis and Charleston railroad, viz., Montgomery, Selma, Birmingham, Ala., Atlanta, Ga., etc.; also on some classes of freight

relative to rates from Baltimore, Philadelphia, New York, etc., to Chattanooga and other competitive points in the territory of the Association.

For some years the custom has been, whenever the rates were reduced or advanced from Eastern cities to Chattanooga, Atlanta, Montgomery, and Selma, corresponding changes were made in rates on some classes of property from Cincinnati to Chattanooga. Again, the custom has been that whenever, for any cause, the rates were reduced or advanced from Louisville, St. Louis, Chicago, etc., to Chattanooga and other competitive points in the territory, corresponding changes were made in rates from Cincinnati to Chattanooga. In this way water competition does affect indirectly rates from Cincinnati to Chattanooga. For instance, rates from St. Louis to Chattanooga, Montgomery, Selma, Birmingham, etc., may and often are reduced by the water and rail lines via Cairo, Ill.; Columbus, Miss.; Memphis, Tenn.; Vicksburg, Miss., and New Orleans, La. Rates from Eastern cities to Montgomery and Selma may be, and often are, affected by water and rail competition via New Orleans and Pensacola, and by water competition by ocean to Mobile, and by river thence to Selma and Montgomery.

If the Louisville and Nashville Railroad Company cannot have the right to make rates between Cincinnati and Chattanooga as low at least as those made by the Cincinnati Southern Railroad Company between the same points, without reducing its rates from Cincinnati to intermediate stations, and from intermediate stations to intermediate stations, it must necessarily surrender all the traffic to the shorter line.

Fifth. Application is hereby made for authority to charge less for the transportation of property between Nashville,

Tenn., and Birmingham, Ala., than for shorter distances on the same line.

The direct rail line from Nashville to Birmingham is 208 miles long. There is a less direct line via Chattanooga, but owing to its indirectness and other conditions the direct line has no competition. In this case the competition is purely that of market with market and product with product, "the most potent factor of competition."

In adjusting the rates between the numerous points reached by the carriers, members of this Association, continuous and persistent efforts have been made to secure and always maintain a fair and equitable relative adjustment. If the rates from Cincinnati to Chattanooga, Atlanta, Montgomery, Birmingham, etc., were reduced, corresponding reductions were made from all other points, including Nashville, to the same points. If competition between rail lines and rail and water lines from St. Louis to Selma, Montgomery, Birmingham, etc., caused a reduction in rates, corresponding reductions were made from other points, including Nashville. The same is true on some classes of freight from eastern cities. If the rates for any reason, from New York to Atlanta, Ga., Chattanooga, Tenn., etc., were reduced, corresponding reductions were made from points in the West, including Nashville, to the same points.

Sixth. Application is hereby made for authority to charge less for the transportation of property between New York and Knoxville, Tenn., than for shorter distances on the same line.

Knoxville, Tenn., is located on the East Tennessee, Virginia and Georgia railroad, nearly midway between Bristol



and Chattanooga. Since the settlement of that part of the country it has been the largest and most important business point in East Tennessee. Many years ago the managers of the East Tennessee, Virginia and Georgia railroad inaugurated the policy of adjusting rates with a view of making Knoxville the point for the interchange of commodities for all the surrounding country. In pursuing this policy relatively low rates were made from Eastern cities and other points to Knoxville. Encouraged by this, a large number of persons engaged in business in Knoxville and invested a large amount of capital in trade. A sudden change in the adjustment of rates to and from Knoxville would be disastrous to some interests. While the present method of adjusting the rates in this case may be indefensible, and while it is believed to be the only instance where a discrimination of the kind exists that is not forced by competition, yet it would be manifestly unjust to suddenly disturb the commercial relations between Knoxville and its surrounding communities, which would involve many in distress without benefit to any. If rates of transportation to Knoxville are advanced, no material advantages accrue to the surrounding communities, for in that case they would continue to pay the same rates as before. This seems to be a case where your Commission may justly authorize an adjustment of rates, temporarily at least, the same as has been in effect for so long a time past.

In considering the foregoing applications it is essential that your Commission do not lose sight of the important fact that the basis now and heretofore used keeps the relative adjustment of rates the same, not only between competitive

points, but between competitive points and local stations. Keeping in mind that the competitive points in this territory are the basing points upon which rates to and from local stations are fixed, the system upon which rates are adjusted becomes comparatively simple and produces rates throughout the entire territory that are just and reasonable.

The rates to and from intermediate stations apply mainly to small shipments of a miscellaneous character. Rates upon property of low value, as compared with the weight and bulk, when shipped in large quantities to and from local stations, are in all cases made relatively low. The strong incentive to traffic agents to do everything in their power to promote traffic may be relied upon to develop the resources of the country at local stations to the fullest extent. In fact, the acts of the traffic agents must be closely scrutinized by the management of the various carriers to prevent the making of such rates relatively too low, thereby creating unjust discrimination.





BEFORE THE INTER-STATE COMMERCE COM-  
MISSION.

---

In re  
Petitions of East Tenn., Va. & Ga. Railway Co. &  
Leased Lines.

---

Argument of Wm. M. Baxter.

---

*Mr. Chairman and Gentlemen :*

Under the 4th Section of the Act unlimited discretion is given to your honorable body to suspend the operation of that section, as to any particular common carrier subject to the provisions of the Act, upon the application of the carrier, and after investigation by the Commission. An application for the suspension of that section is now pending, so far as the East Tennessee, Virginia & Georgia system of roads is concerned. While it is conceded that the justice or propriety of the general provisions of the Act cannot be inquired into, it is respectfully submitted that this is not so with reference to the 4th Section of the Act, upon the present application. If it can be shown that it would be unjust to apply the provisions of the 4th Section to petitioner's system of roads, that would certainly be a most material consideration that should move the Commission to exercise the discretion committed to it by the proviso of the 4th Section. There is no limitation upon the considerations that shall influence the Commission in reaching a decision upon the suspension

of the 4th Section. If after investigation they conclude, for any good and sufficient reason, that said section should be suspended as to any common-carrier subject to the provisions of the Act, the discretion to make that suspension is absolutely committed to them.

**Charges for Short Hauls may be Higher than  
Charges for Long Hauls and Still be  
Just and Reasonable.**

When a railroad is built between two points ; for instance, between Bristol and Chattanooga, the common-carrier is entitled, within the limits of reasonable charges for services performed, to receive, as earnings, such sums as will defray the cost of operating and maintaining its road and equipment, and, in addition thereto, a fair return upon its investment of capital ; and it is entitled to receive this compensation out of the business of the local territory through which the road runs. Any business naturally forces competition, and the basis of charges very naturally adapts itself to the idea of charging more for a long than a short haul. If a shipment of goods were offered from Bristol to Cleveland, Tenn., the carrier, without competition, is in a position to ask, demand and receive whatever the service is worth ; and this without reference to the volume of traffic. If such charges are reasonable, there is no just ground of complaint. When, however, the natural laws of competition come into play, by the opening of water-routes, or the building of other competing railroads, on said supposed line of railroad ; as for instance, at Chattanooga, Tenn., the business to and from that point is done upon a competitive basis. Such a place, because of such competition, at once grows up as a manufacturing, trading and distributing center ; and the volume of

business or traffic is correspondingly increased; and the competition for such business becomes sharper and sharper every day. Business to and from that point must be done at competitive rates, or not done at all. It is no longer within the power of the carrier to charge a rate that would be greater than the competitive rate; and, therefore, if a greater amount were charged for a long haul to that point than was charged to a non-competitive point upon a short haul going in the direction of the competitive point, other carriers doing business into and out of that place by cheaper or shorter routes, would get the traffic. Arising out of this state of things, there are therefore several obvious considerations that justify the carrier in doing business at the competitive rate, without reference to whether it may be more or less than rates to intermediate or "short-haul" points: *1st*, The making of a rate to competitive points is a matter over which the carrier has no control. The rate is made by the carrier having the greatest advantages, either by shortness of route or cheapness in the method or manner of transporting. *2nd*, The volume of traffic is so much greater at the competitive point, that a smaller margin of earnings upon business done there would produce more revenue than a much larger margin of profit would produce on business done at an intermediate or "short-haul" point; as for instance the report of the Receiver of the East Tenn., Va. & Ga. Railroad for the year ending June 30th, 1886, shows that the amount earned at Chattanooga, Tennessee, for freight forwarded, was \$387,805.07, and for freight received, \$277,311.28, aggregating \$665,116.35; whereas, for the same period, at Tyner's Station on said road, a point *seven miles nearer the Eastern cities than Chattanooga*, the amount of freight forwarded was \$255.62, and for freight

received, \$312.28, aggregating \$567.90, barely enough to pay station expenses. A simple calculation will demonstrate that a margin of one per cent. profit upon the business done at Chattanooga would produce more than a hundred times as much revenue, as ten per cent. profit upon the business done at Tyner's. 3rd, The cost of handling the business at Chattanooga, a terminal and competitive point, can be done for proportionately much less money per ton than it can be done at Tyner's.

It is entirely improper and unfair to make any comparison between the rate that may be charged to Tyner's, and the rate that may be charged to Chattanooga. The only consideration that should be looked at in reference to the rate to Tyner's Station, is whether or not such rate is in itself reasonable or unreasonable for the service performed. If there is no ground of complaint upon that score, none can be justified upon the ground that some competitive point near by has all the advantages that naturally flow from competition and location. *The question is frequently asked, if a carrier can afford to do business from Eastern points into Chattanooga, for say \$1.14 per hundred, 1st class, why it can't just as well afford to give the same or a less rate to Tyner's Station, which is seven miles less in distance.* The answer is obvious, if proper weight is given to the considerations which have already been mentioned. The fallacy of the idea lies principally in the fact of instituting a comparison of charges as between a competitive and non-competitive point; and the injustice of the application of any such comparison of rates, or the application of any such principle, is made manifest by giving due weight to competitive forces, volume of traffic, etc. Again, the question is frequently asked, does it cost the carrier any more to haul a car-load of goods from



Bristol to Tyner's, than it does from Bristol to Chattanooga, seven miles further? It seems to me that this question is easily answered. In the first place, the question assumes that goods go to Tyner's Station in car-load lots. This is probably never the case; but if it were, the proposition contained in the question is fallacious, for the reason that it assumes that the charge is based *solely upon the cost of the haul*. According to the best estimate that can be made, based upon a long series of statistics, the *cost of the haul* does not amount to more than thirty-five per cent. of the *cost of service*; as, in the cost of service is included the cost of transportation, the cost of maintenance of way, and fixed charges, which represent a partial return upon the cost of investment. When these facts are considered in connection with those already stated in reference to the volume of traffic, it would seem that the question is satisfactorily answered. Another consideration which controls rates into and out of competitive points, aside from those already mentioned, is that the carrier gets a second haul upon the re-distribution of commerce from these trading centers; while at local or intermediate points, such is not the fact.

**Is it Practicable to Average Rates by Raising the Rates to Competitive Points and Reducing the Rates to Intermediate Points?**

During the session of the Commission at Atlanta, a question was asked one witness, which was in substance: "Would it not be practicable to give all points between Atlanta and Chattanooga, the Atlanta rate?" *The first objection* to such a basis of rate-making would be, that such a basis itself would be in violation of the spirit of the "long and short haul" provisions of the Act; the *second*, that points

nearest to Chattanooga would demand that they be allowed the Chattanooga rate, which is less than the Atlanta rate, for the reason that they are located nearer the Eastern markets ; *the third*, that the raising of the rate to Atlanta by any longer line in order to hold its local business, without violating the law, would enable the shorter line to make a less rate, and thereby monopolize the Atlanta business ; *the fourth*, that such a policy would have the inevitable effect of either diverting to Eastern trade-centers all the present distributive trade of Atlanta to its local territory, or, if this local territory was still, for any reason, compelled to trade with Atlanta, would increase the rate by the addition of local rates to the Atlanta rate ; in the one event, the trade of Atlanta would be destroyed ; in the other, intermediate points would pay higher rates than at present. It would seem, therefore, that such a basis of rate-making is impracticable. Before the days of railroads, no such principle as is now contended for, was ever applied or advocated. All trade centers were located with reference to water-transportation, and by reason of that location, had the benefit of the widest competition between carriers. Places inland with reference to such trade-centers, necessarily, and not unjustly, suffered the disadvantage of their location. They had the benefit of the competition between carriers to water-points, but from those points they had to pay such rate of overland-transportation, in addition, as competition between overland-carriers established. Relatively, they occupy precisely the same situation to-day. The fact that a railroad may *pass through* such an inland town, in order to reach a competitive water-point, or competitive rail-point, it would seem, ought not to alter the principle. This one single fact, however, seems to have given rise to all the complaints on this subject. An illus-

tration of this is aptly furnished by the testimony of Mr. L. Johnson, who was examined in Atlanta on the 26th of April, 1887. He resides and does business at Graham, Ga., a station on the Brunswick Division of the East Tenn., Va. & Ga. R'y. He buys his produce in the West, upon quotations, "delivered in the Port of Brunswick, Ga." The rate from the West to Brunswick, Ga., is made by the water-routes. The charges of water-carriers enable the trunk lines to make a rate to Baltimore and Philadelphia, which, in connection with the water-rate, is less than the all rail-rate from Western markets to Brunswick. Now, if this produce reaches Graham, Ga., by any other route than over the line of the East Tenn., Va. & Ga. R'y., Mr. Johnson pays a rate to Brunswick by other lines, and in addition thereto, a local rate from Brunswick to Graham, over the East Tenn., Va. & Ga. R'y. By reason of the fact, however, that the East Tenn., Va. & Ga. R'y., upon its way to Brunswick, *passes through Graham*, it is insisted that the Railway Company should haul this produce for a less rate to Graham, Ga., than to Brunswick, Ga. If such a principle is applied, one of two things must result: *1st*, the East Tenn., Va. & Ga. R'y Co. and its connections must go out of competition for Brunswick business, no matter what its volume may be; or, *2nd*, it must reduce all of its intermediate rates, so that they shall be less than the Brunswick rate, no matter how small the volume of traffic may be to such intermediate points. In either event, the East Tenn., Va. & Ga. Railway Company would be deprived of both business and revenue, and the people, directly and indirectly, deprived of the benefits naturally flowing from competition. Whether the goods go by other routes than that of the East Tenn., Va. & Ga. Railway, or by that route, under the present basis of rate-making,

Mr. Johnson gets precisely the same rate to Graham, which is a less rate than if there was no competition for business to Brunswick. Upon the *proposed* basis, the East Tenn., Va. & Ga. Railway Company would be compelled, in order to preserve its local territory to itself, to withdraw from Brunswick; and in proportion as the competition from Brunswick was lessened, the rates of carriers doing that business would be increased, and the inevitable result would be that Mr. Johnson, and all those similarly situated, would have to pay higher rates than at present.

**The Enforcement of the "Long and Short Haul" Clause would bring about a Division of Territory.**

This would necessarily result for two or three reasons: *1st*, It would enable the shortest line or cheapest route to make the lowest rate; and if longer lines were not allowed to meet it, without reference to their rates to intermediate points, the short line or cheap route would have a monopoly of the business originating in territory contiguous thereto, or destined therefor. *2nd*, If forced to abandon either through or local business, the Railroad Companies would abandon the through business. In the report of the Receiver of the East Tenn., Va. & Ga. Railroad heretofore referred to, for the year ending June 30th, 1886, the revenue received from through business (280,812 tons) was \$501,574.14, and from local business (1,254,114 tons) \$2,074,918.44. A similar condition of things exists as to passenger earnings. (See Report, pp. 51 and 63.) Comment upon these figures is unnecessary. There could be no hesitation in the choice of business that Company would surrender. It would rely wholly upon its own territory; and being deprived of the revenue flowing from through business, it would have to make good this loss

by an increase of rates, which it would have the right to so make good, within the limitation of reasonable charges. There would then be no longer any occasion for making comparisons between rates to competitive and non-competitive points. Revenues would have to be raised from local business, or the Company go into bankruptcy; and upon foreclosure, its road would become a part of some consolidation. This process would be continued until all competition would be destroyed, except as between rail and water-lines. Certainly the Congress of the United States did not intend to accomplish any such result. It is evident from other provisions of the Act, that they intended to foster competition, and give it the widest possible scope. It is not believed that they intended to bankrupt railroad corporations, or unnecessarily embarrass or destroy the business of any section of the country, or any of its cities. All the development of the South has been brought about by the policy of Southern railroads, which is indicated in the tariffs that are now in existence. These tariffs have been made after years of struggle and contest, as between themselves and water-routes, and as between markets and trade-centers. They seem to be as nearly satisfactory to the people as it is possible to make them, and there appears to be no good reason why the whole method and system of rate-making in this country should be suddenly revolutionized. If it is done, commerce will be thrown into utter confusion, and inestimable damage will be done, and no appreciable benefits will be derived. It is merely the same old struggle that has existed from time immemorial (with unvarying failures) to try to control, by legislation, the laws of trade and commerce, and to remove, by statute, the disadvantages of geographical position. The Congress of the United States,

very wisely, has vested in your Honorable Body the discretion of correcting the mistake; and we believe enough has been shown by evidence, and the natural reason of the thing, to persuade you to grant the relief asked for in these petitions.

Respectfully submitted.

WM. M. BAXTER,  
*Solicitor for Petitioners.*

















